

Dropa Devi Vs. State of U.P. and anr.

Dropa Devi Vs. State of U.P. and anr.

SooperKanoon Citation : sooperkanoon.com/483529

Court : Allahabad

Decided On : Nov-24-1995

Reported in : I(1996)DMC611

Judge : R.K. Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125

Appeal No. : Criminal Revision No. 1226 of 1983

Appellant : Dropa Devi

Respondent : State of U.P. and anr.

Advocate for Def. : A.G.A. for Respondent No. 1 and ;Devendra Swarup, Adv. for Respondent No. 2

Advocate for Pet/Ap. : Raj Singh, Adv.

Disposition : Petition allowed

Judgement :

R.K. Singh, J.

1. Heard Mr. Raj Singh, learned Counsel for the revisionist, Mr. Devendra Swarup, learned Counsel for respondent No. 2 Laxmi Narain and the learned A.G.A. for the State respondent No. 1 at length and in detail.

2. Perused the impugned order passed by VIth Addl. Sessions Judge, Aligarh in Criminal Revision No. 723 of 1982 and the judgment and order passed by IVth Judicial Magistrate, Aligarh in Suit No. 252 of 1982 Under Section 125 Cr.P.C. The learned Judicial Magistrate allowed maintenance for the applicant, Dropa Devi and her minor son at the rate of Rs. 150/- per month. The revisionist, Dropa Devi was allowed maintenance on the ground that she is unable to maintain herself. The learned Addl. Sessions Judge set aside the order of the Judicial Magistrate holding that the evidence of the petitioner lady and her father was not corroborated by the maintenance application filed in the Court Page Nos. 3 & 4 of the impugned judgment. The learned Addl. Sessions Judge has given reasons how the evidence of the petitioner Dropa Devi and her father differed from the facts noted in the maintenance-application. Simply on this ground he has held that the evidence of the petitioner and her father is not acceptable. On the point of income of the husband the learned Addl. Sessions Judge has observed that the evidence on the point of income is not very sound and acceptable.

3. The provision of Section 125 Cr.P.C. requires only three things :

(1) that the husband has capacity to maintain,

(2) that he neglects or refuses to maintain his wife, and

(3) that the wife has no means to maintain herself. The allegation petition claiming maintenance has given grounds for compelling this petitioner to live separately and the grounds taken in the evidence of the petitioner lady has also good grounds compelling her to live separately. If Sessions Judge has found any difference in the grounds compelling the lady to live separately then also the point remains that she is compelled to live separately from the husband. The learned Addl. Sessions Judge has noted certain statements to disbelieve the witness which are not necessary to be noted here but the total effect of the statement is to support the grounds for her living separately from her husband, so the admitted position is that the claimant lady is living separately with her father being compelled by husband not to maintain her and she is ill treated on several grounds. This nature of contradiction is not worth consideration for the Court when the claim is being considered. She has several grievances against the husband,

the opposite party No. 2 Laxmi Narain has 'nowhere' claimed that the wife is not ready to live with him. His simple ground is that he has not sufficient means because he runs only a 'Khocha' and the lady is without any reason living separately from him. Learned Counsel has taken shelter of 2nd proviso of Sub-sections 3 and 4 of Section 125 Cr.P.C. The record speaks that no such ground was taken by the opposite party No. 2 that the life is rudy to maintain her on the condition that she will live with him and she is refusing to live. Therefore this nature of argument is not at all available in this case.

4. The admitted position is that the husband is running a 'Khocha'. The claimant's evidence is that her husband is earning Rs. 50-60 per day. The opposite party No. 2 has not given any estimate of his daily income but he has stated that he is earning Rs. 100-150 per month only. Now-a-days normally labourers are earning Rs. 40/-per day and their per month income comes atleast Rs. 1200/-, and the business men are earning more than the labourers. So at the present the O.P. 2 can be acceptable to be insufficient means, who has admitted to be running business of 'Khocha'.

5. It is apparent that the opposite party No. 2 is neglecting his wife without any reason and the claim of the revisionist lady is being defeated in this way. Since last 15 years she has got nothing due to pendency of revision petition. The grounds taken in the argument of the learned Counsel for opposite party No. 2 is that the order of the Magistrate is composite one allowing Rs. 150/- per month as compensation without clarifying the per head amount (wife and son). Learned Counsel has argued that the order of Magistrate is bad on this ground also. There is merit in this contention but it is not a case where the order of remand can be justified. The claim of the revisionist is quite justified. The impugned order of the learned Addl. Sessions Judge is perfectly against the spirit of law Under Section 125 Cr.P.C. The revision petition is allowed. The impugned order of the learned Addl. Sessions Judge is hereby set aside. The value of money has gone down to the level that these days Rs. 150/- per month is not sufficient even for a minor child. In any case less than Rs. 300/-per month is not sufficient for a human being to survive. So it is hereby ordered that opposite party No. 2 Laxmi Narain will pay maintenance per month at the rate of Rs. 300/- for the minor child, if he is minor

and at the rate of Rs. 300/- per month to the wife. The arrears of total amount at the rate of Rs. 150/- which was allowed by the Magistrate Court till today, must be paid to the claimant lady in the equal instalments from today. 1st instalment will be paid by the end of January, 1996 and the second instalment must be paid by 31st March, 1996, failing which strict legal steps will be taken by the lower Court to realise the amount of compensation from the opposite party No. 2 and it must be paid to the victim lady. The lower Court record is with the file. Office is directed to return back the lower Court record within one week from today through special messenger for compliance of the order.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com