

SamaydIn Vs. State of U.P. and anr.

SamaydIn Vs. State of U.P. and anr.

SooperKanoon Citation : sooperkanoon.com/487184

Court : Allahabad

Decided On : Jan-04-2001

Reported in : 2001CriLJ2064

Judge : S.K. Agarwal, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 125 (2)

Appeal No. : Criminal Misc. Appln. No. 1497 of 1999

Appellant : Samaydin

Respondent : State of U.P. and anr.

Advocate for Def. : A.G.A. and ;D.R. Chaudhary, Adv.

Advocate for Pet/Ap. : Sunil Kumar Adv.

Judgement :

ORDER

S.K. Agarwal, J.

1. Heard learned Counsel for the applicant and learned A.G.A., Sri Anoop Ghosh and have perused both the orders also.

2. The order of the learned Judicial Magistrate granting maintenance of Rs. 500/-to the respondent from the date of the application has been modified by the learned IX Additional Sessions Judge, Bulandshahr, only to the extent of reducing the amount from Rs. 500/- to Rs. 400/-.

3. On examination of both the judgments, I do not find any serious infirmity in them nor any such infirmity was pointed out on behalf of the applicant. It is only urged that maintenance amount should be fixed from the date of the order as the law normally requires. If the Court intends to grant maintenance from the date of application Court must record its reasons for doing so. The contention has some force. Sub-section (2) of Section 125, Cr. P.C. spells as under :

(2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance.

4. From an examination of the language of this sub-section it clearly follows that in normal circumstances the maintenance must be granted from the date of the order. In only extraordinary circumstances, it may also be ordered to be paid from the date of application for maintenance. It is thus clear that there must be a discussion of such circumstances which warrant the Court to allow it from the date of application. No other inference is permissible from the language of sub-sec. (2). One such extraordinary circumstance may be dilatory tactics adhered to by the husband in the disposal of the proceeding. The other one may be untold

cruelty practised against his wife. No extensive ground can be formulated for doing so. The learned Magistrate has not given any reason for allowing maintenance from the date of the application. Nowhere in the judgment before delivering the operative portion he had shown any such inclination. As a matter of fact the Court has taken the husband by surprise by making such a direction for the first time in the operative portion of the judgment. I am, under the circumstances, inclined to accept this contention and modify the order and make it payable from the date of order. The maintenance allowance shall be payable from the date of the order.

5. Accordingly this application is partly allowed.

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