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Bhanwarlal Vs. Gitabai

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Court : Madhya Pradesh

Decided On : Feb-14-1957

Reported in : AIR1957MP221; 1957CriLJ1409

Judge : Nevaskar, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 488(3)

Appeal No. : Criminal Revn. No. 130 of 1956

Appellant : Bhanwarlal

Respondent : Gitabai

Advocate for Def. : S.L. Shukla, Adv.

Advocate for Pet/Ap. : G.L. Oza, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

Nevaskar, J.

1. Gitabai wife of Bhanwarlal filed an application under Section 488, Criminal Procedure Code for maintenance against her husband Bhanwarlal. Bhanwarlal admitted that Gitabai was his married wife. It is also admitted that Bhanwarlal

contracted a second marriage and that his wife by second marriage was residing with him. The Additional District Magistrate, Indore City, who heard the petition ordered Bhanwarlal to make a monthly allowance of Rs. 30 for the maintenance of Gitabai. A petition for revision against that order was filed in the Court of Session and the learned Additional Sessions Judge rejected that revision petition. The present revision petition is directed against those orders.

2. The only point pressed by learned counsel for the petitioner both in the Court of the Additional Sessions Judge, Indore and before me is that ia view of the wordings of the proviso in Sub-section (3) of Section 488, Gitabai is not entitled to maintenance unless she agrees to stay with her husband Bhanwarlal. According to the learned counsel, Bhanwarlal is prepared to maintain her on condition that she lives with him. He is not prepared to give her separate maintenance. The learned counsel relied upon a decision reported in State v. Mt. Anwarbi, AIR 1953 Nag 133 (A) for the view that the mere fact that a husband has married again, does not entitle the first wile to maintenance unless it were established that he had neglected or refused to maintain her. The decision according to the learned counsel indicates that all that she can do in case of second marriage by her husband is to refuse to live with him.

3. In my opinion having regard to the circumstances of this case the petitioner is not entitled to succeed. It is well established in this case that Gitabai was living apart since about three years prior to the date of the application and that during this period the petitioner Bhanwarlal did not provide her any maintenance. It is further proved that a notice had been given on behalf of Gitabai to the petitioner Ex. P-1 demanding maintenance.

In spite of this notice, which was given on 7-1-1954, no maintenance was provided till the date of the application, i.e., 26-6-1954. In reply to the notice Ex. P-l, the petitioner required Gitabai to come and stay with him along with his second wife and act according to the wishes of himself and his mother. It is clear from these circumstances that in spite of the demand for maintenance the petitioner was not prepared to maintain Gitabai although she was his married wife.

The condition imposed by him was the very condition which cannot be imposed in view of the amendment introduced to the proviso in Sub-section (3) of Section 488 of Criminal Procedure Code. When a husband effects a second marriage, it is open for the first wife to refuse to live with her husband and that will be considered to be a just ground for her refusal. The proviso to Sub-section (3) of Section 488 entitles the Magistrate to consider the grounds put forward by the wife claiming maintenance for her refusal to stay with her husband in spite of an offer to that effect and to pass order awarding maintenance to her, if such grounds are considered by him to be just. The amendment to the proviso puts down the fact of second marriage by the husband as a just ground for her refusal.

Therefore even if there be an offer by the husband, to maintain his wife on condition of her living with him, the Magistrate is entitled to pass an order of maintenance, if that offer be under the circumstance that the husband has contracted a second marriage and his second wife is living with him. The Nagpur decision upon which reliance has been placed by learned counsel for the petitioner, cannot be read to mean that in spite of the fact that the husband has contracted a second marriage, unless the petitioning wife is prepared to live with him, she would not be entitled to maintenance. What is laid down there is that the fact of neglect or refusal to maintain by the husband has got to be established in order to enable a petitioning wife to claim maintenance. In the present case this fact has been sufficiently established by the conduct of her husband in not maintaining her for three years and by the notice which his wife has given demanding which is not complied with.

4. In my opinion the petition cannot succeed.It is hereby dismissed.

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