Krishnakumar Vs. Kiran

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Court : Madhya Pradesh

Decided On : Jul-20-1990

Reported in : I(1991)DMC248

Judge : K.L. Shrivastava, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 125 and 125(4)

Appeal No. : Criminal Revision No. 204 of 1989

Appellant : Krishnakumar

Respondent : Kiran

Advocate for Def. : N.L. Gupta, Adv.

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

Disposition : Petition dismissed

Judgement :

K.L. Shrivastava, J.

1. This revision petition by the husband is directed against the revisional order dated 11-9-1989 passed by the 1st Additional Sessions Judge, Barwani in Criminal Revision No. 79 of 1987 whereby setting aside the order dated 21-3-87 passed by the A.C.J.M. Barwani dismissing the non-applicant's application under

Section 125 of the Criminal Procedure Code, 1973 (for short 'the Code'), the petitioner has been ordered to pay a monthly allowance in the sum of Rs. 400/- for the maintenance of the non-applicant.

2. Circumstances giving rise to the revision petition are these. The non-applicant on 10-10-85 filed the application under Section 125 of the Code in the Court of the Addl. Chief Judicial Magistrate, Barwani alleging that the petitioner has been cruel to her and had driven her out of the marital home in April 1985 and has refused to maintain her. The application was opposed.

3. At the conclusion of the evidence, the learned Magistrate dismissed the aforesaid application holding that the non-applicant has failed to prove the cruelty alleged.

4. The non-applicant successfully challenged the aforesaid order in revision which has been disposed of by the impugned order.

5. It may be pointed out that during the pendency of the application under Section 125 of the Code there has been divorce between the parties by mutual consent. The learned Magistrate did not take into consideration this fact holding t lat there was no pleading on the point.

6. The contention of the learned counsel for the petitioner is that the finding recorded by the learned Magistrate as to cruelty was sustainable on the material on record and the learned Additional Sessions Judge erred in interfering with it in exercise of his revisional jurisdiction. It was further contended that as the parties were living separately by mutual consent, the non-applicant was not entitled to receive any allowance from the petitioner in view of the provision embodied in Sub-section (4) of Section 125 of the Code.

7. The contention of the learned counsel for the non-applicant is that the finding recorded by the learned Magistrate was without any regard to the object behind the provision embodied in Section 125 of the Code and occasioned mis-carriage of justice and was rightly interfered with. In support of this submission he has placed reliance on the decision in Giri Shchandra's case (1987 (II) MPWN 214).

8. Relying on the decision in Raghunath v. Suman, 1988 MANISA 57 (MP) and on the decision in Rayajunnisa's case 1981 (1) MPWN 23 in which reliance has been placed on the decision in Bai Tahira's case AIR 1979 SC 362 the learned counsel for the non-applicant urged that the expression 'living separately by mutual consent' as contemplated under Sub-section (4) of Section 125 of the Code does not take within itself the case of husband and wife living separately as a result of decree of divorce based on mutual consent.

9. Relying on the decision in Niamat Khan's case AIR 1951 Nagpur 206 the learned counsel for the non-applicant urges that the impugned order is not amenable to interference in exercise of the revisional jurisdiction of this Court.

10. The point for consideration is whether the revision petition deserved to be allowed.

11. A perusal of the evidence of non-applicant Kiran (AW 1) shows that the petitioner used to abuse her and beat her and, therefore, she left his home. She is corroborated by her uncle Balmukund (AW 2). The learned Magistrate did not consider this evidence in its proper perspective and, therefore, he fell into an error and passed the order which occasioned miscarriage of justice. I hold that it was rightly interfered with in revision.

12. At this stage reference may be made to Sub-section (4) of Section 125 of the Code, It reads thus :--

'No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.'

13. The decision in Raghunaths case (supra) makes an illuminating reading as to the import of the expression 'living separately by mutual consent' occurring in the provision quoted above. The expression does not cover living separately due to divorce. In the instant case there admittedly was a decree of divorce based on mutual consent and this fact, even in the absence of pleadings, could be considered in the proceeding under Section 125 of the Code. The non-applicant

being a divorcee was under no obligation to live with the petitioner.

14. On a careful consideration of the material on record I find that the quantum of monthly allowance, in the circumstances of the petitioner, is not such as to call for interference in revision. Reference in this connection my usefully be made to the decision in Rameshwar's case 1987 MANISA 53.

15. Regarding the scope of revisional jurisdiction, the following observations in Niamat Khan's case (supra) may usefully be reproduced :--

'The High Court will not always interfere in revision even though the order of the Court below is wrong in law or the trial in the Court below is illegal and not merely irregular if no prejudice is shown to have resulted to the accused. The power of interference is to be exercised only for the purpose of correcting injustice not merely illegality.'

16. The last contention of the learned counsel for the petitioner is that in the circumstances of the case, the normal rule of granting maintenance from the date of the order ought not to have been departed from. I find that this contention has force. The proper order to be passed by the learned Magistrate was that of allowing the application. The learned Additional Sessions Judge by his order has done what the learned Magistrate ought to have done. The order of the learned Addl. Chief Judicial Magistrate is dated 21-3-1987 and I order accordingly.

17. In the result, with the aforesaid modification as to the date from which the monthly allowance for the maintenance of the non-applicant shall be payable, the revision petition is dismissed.