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Court : Madhya Pradesh

Decided On : Dec-09-1992

Reported in : I(1995)DMC496

Judge : C.K. Prasad, J.

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

Appeal No. : Criminal Revision No. 305 of 1985

Appellant : Bachubai

Respondent : Dulesingh

Advocate for Def. : Bhagwan Singh, Adv.

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

Disposition : Petition allowed

Judgement :

C.K. Prasad, J.

1. The petitioner is aggrieved by the order dated 7-10-1983 passed by the Additional Sessions Judge, Jhabua, in Criminal Revision No. 40/85, whereby the order of maintenance passed by the Chief Judicial Magistrate, Jhabua, dated 25-3-1985, in Criminal Case No. 61 of 1994, had been reversed. The learned

Magistrate on an application filed by the petitioner has directed to the opposite party herein for payment of Rs. 150/- as maintenance to her.

2. That the petitioner has filed an application before the learned C.J.M., Jhabua, under Section 125 Cr.P.C. stating therein that she was married to the opposite party and she has given birth to a daughter. The marriage, according to the petitioner, has taken place 7 years before the birth of the daughter, in the month of Phalgun. The petitioner was assaulted by the opposite party and driven away from the matrimonial home. It was further stated that the petitioner's father had gone to the house of the party alongwith her but the opposite party declined to keep her as he has married a second lady. The petitioner has further stated that she is unable to maintain herself and therefore, prayer was made for grants of maintenance at the rate of Rs. 300/- per month.

3. The opposite party has not denied the factum of marriage and his defence is that the petitioner left the matrimonial home leaving seven months old daughter. The allegation of the petitioner that she was assaulted and driven out from the house was also disputed. The opposite party has further disputed that he has married a second lady. In fact, the opposite party has stated that he is prepared to keep the petitioner alongwith him. On the aforesaid premises the opposite party has prayed for rejection of the petition filed by the petitioner.

4. The learned C.J.M. by its order dated 25-3-1985, held that the petitioner is entitled for maintenance at the rate of Rs. 150/- p.m. while directing for grant of maintenance to the petitioner, the learned Magistrate accepted her case that she was assaulted by the opposite party and driven out from the matrimonial home. The learned Magistrate further held that the opposite party as keeping another lady as his wife and in that view of the matter the petitioner was entitled to refuse to live with him.

5. The opposite party herein aggrieved by the aforesaid order of the learned Magistrate preferred Criminal Revision No. 40 of 1985 and by the order dated 7-10-1985 the A.S.J., Jhabua, set aside the order of the learned Magistrate and allowed the revision application. As stated earlier the petitioner being aggrieved by the aforesaid revision application has preferred this application before this Court.

While allowing the revision application the learned A.S.J. has gone in detail about the allegation of the opposite party having been married with another lady. On analysis of the evidence the learned A.S.J. held that the marriage of the opposite party another lady has not been proved. In opinion of the learned A.S.J. the beating of the petitioner by the opposite party once cannot be termed to be cruelty.

6. The learned Counsel for the petitioner in support of the application has submitted that the finding of the learned Magistrate about the cruelty as also the keeping of another woman by the opposite party being founded on to get reasons, the A.S.J. ought not to have reversed that finding. He this further submitted that the finding arrived at by the learned Magistrate was on proper analysis of the evidence and there was nothing wrong which called for interference by the learned A.S.J.

7. No body has appeared on behalf of the opposite party to resist this revision application. Having given my most anxious consideration to the entire facts and circumstances of the case. I am of the view that the learned A.S.J., in the facts and circumstances of the case, ought not to have interfered with the order of the learned C.J.M.

8. Firstly the Revisional Court failed to appreciated that the case of the petitioner was that she was assaulted and then driven away from the matrimonial home. This was considered to be a solitary act by the learned A.S.J. while aside setting the order of the learned Magistrate. The whole approach of the learned A.S.J. was thus not founded on good reasons. The petitioner having led evidence to prove that after the she was assaulted and then driven away from the matrimonial home, this ought not to have been taken as a solitary incident to negative the contention of the petitioner. I am of the view that this act of the opposite party is nothing but a cruelty and as such the petitioner was rightly granted maintenance by the learned Magistrate.

9. The learned A.S.J., as stated earlier, has also reversed the finding of the learned Magistrate regarding the second marriage of the opposite party. However, in my opinion, the finding of the learned Magistrate was based on cogent evidence and did not call for interference by the Revision at Court. There is evidence on

record in the shape of (P.W. 2) Bachhubai that the opposite party has kept a lady named Indra as his wife, she has further stated in her evidence that the opposite party has gone with five persons to bring the aforesaid Indira as the wife of the opposite party. However, the learned A.S.J. did not believe her evidence solely on the ground that (P.W. 4) Patliya did not give name of those five persons who has gone alongwith the opposite party. I am of the opinion that the question involved in the case was not the manner in which the second lady came to reside with the opposite party but whether the second lady is living with the opposite party, which would be valid ground for the petitioner to leave her matrimonial home The petitioner, in my opinion, has been able to prove that the opposite party was living with another woman, she is entitled for the maintenance.

10. For the reasons stated above, this revision application is allowed. The order of the learned A.S.J. Jhabua, dated 7-10-1985 passed in Criminal Revision No. 40/85, is hereby set aside and the order of the learned Chief Judicial Magistrate dated 25-3-1985 passed in Criminal Case No. 6184 is restored. The revision application thus stands allowed with no order as to costs.