

Manubai Vs. Sukhdeo

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Court : Madhya Pradesh

Decided On : Jan-07-1989

Reported in : 1990CriLJ646; 1989MPLJ433

Judge : K.L. Srivastava, J.

Acts : [Hindu Marriage Act, 1955](#); [Hindu Adoptions and Maintenance Act, 1956](#) - Sections 18; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 25, 125, 399(3) and 482

Appeal No. : Misc. Cr. C. No. 943 of 1987

Appellant : Manubai

Respondent : Sukhdeo

Advocate for Def. : R.S. Garg, Adv.

Advocate for Pet/Ap. : Jaisingh, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K.L. Srivastava, J.

1. This application under Section 482 of the Code of Criminal Procedure 1973 (for short 'the Code') is directed against the re-visional order dt. 23-3-87 passed by the 3rd Additional Sessions Judge Dhar Carnp Maria-war in Criminal Revision No. 18 of 1986 whereby the petitioner's revision against the order passed by the Magistrate rejecting her application under Section 125 of the Code, to make monthly allowance, for her maintenance, has been dismissed.

2. Learned inquiring Magistrate has disallowed the petitioner's application on the ground that she has been unable to prove that there has been neglect of refusal on the part of her husband - the non-applicant to maintain, her.

3. The revisional Court has found that on the material on record, the impugned order is sustainable and no interference in exercise of the revisional jurisdiction was called for.

4. The point for consideration is whether the application deserves to be allowed.

5. Section 125 of the Code, irrespective of the question of religion to which the parties belong provides a machinery for summary enforcement for the moral obligation. As is clear from the use of the word 'may' occurring in the section, it does not confer an absolute right on the wife. Thereunder the husband is not bound to maintain his wife in all circumstances. The legislature leaves the question of passing an appropriate order in the domain of the Court's discretion which, of course, has to be exercised in a judicial manner consistently with the language of the statute with due regard to every relevant circumstance of the case. It may also be pointed out that that discretion has to be exercised primarily towards the end which the legislature had in view in enacting the provision. Reference in this connection may usefully be made to the decision in Bhagwan Dutt's case (1975) 2 SCC 386 : (1975 Cri LJ 40).

6. The Marriage casts certain obligations on the parties concerned. A wife, in addition to other obligations is required to live with her husband. Therefore where the wife is living separately from her husband, before casting any liability on the latter in regard to her maintenance, it has to be ascertained Whether there is just ground for her so living. Reference in this connection may usefully be made to the

decisions in Smt. Khatoon's case AIR 1982 SC 853, Chandabai's case 1984 MPWN 394 and Kamlabai's case 1984 MPWN 170. In this very connection reference may also be made to the following observations in para 12 of the decision in Begum Subanu alias Saira Banu's case 1987 Cri LJ (SC) 357 : (1987 Cri LJ 980): -

'In the case of wife, whether their ties of marriage subsist or not, the anxiety of the Legislature is that they should not only not resort to begging, stealing or cheating etc. but they should also not feel compelled for the sake of maintaining themselves to resort to an adulterous life or in the case of divorced women, to resort to re-marriage, if they have sentimental attachment to their earlier marriage and feel morally bound to observe their vows of fidelity to the persons whom they had married. This position emerges when we take an overall view of sub-sees. (1), (4) and (5). While sub-sec. (4) provides that a wife shall not be entitled to receive maintenance from her husband if she is living in adultery or if without sufficient reason she refuses to live with her husband or if she lives separately by mutual consent, sub-sec. (5) provides that an order of maintenance already passed can be cancelled for any of the aforesaid reasons. Thus by reason of sub-sees. (4) and (5) a husband can avoid his liability to pay maintenance if his wife is living in adultery. Correspondingly a right has been conferred on the wife under the explanation to live separately and claim maintenance from the husband if he breaks his vows of fidelity and marries another woman or takes a mistress.'

7. As pointed out in the decision in Shantabai's case 1984 MPWN 125 proceedings under Section 125 of the Code are not of the nature contemplated in Hindu Marriage Act 1955 and it is not necessary for the wife to prove 'desertion' or 'cruelty' by adducing any elaborate evidence on the point. It is sufficient for her to establish the circumstances from which a prima facie case of her husband having neglected her or refused to maintain her could be spelt out.

8. It may be noted that the provision in Section 25 of the Code is not intended to provide for a full and final determination of the status and personal rights of the parties. The jurisdiction conferred thereunder is more in nature of the preventive rather than remedial one. It is certainly not punitive. A wife has her remedy also

under the Hindu Marriage Act and under Section 18 of the Hindu Adoptions and Maintenance Act 1956. It has to be remembered that Section 399(3) of the Code expressly bars second revision by the same party. The inherent powers under Section 482 *ibid* have to be sparingly exercised in order to meet the three situations contemplated therein. The jurisdiction under the provision is not to be exercised as appellate or revisional jurisdiction for correction of errors of facts or of law. The provision cannot be permitted to be resorted to for circumventing other provisions of the Court. The contention of the learned counsel for the petitioner that on the material on record correct conclusion was one of neglect or refusal on the part of the N. A. to maintain the petitioner and the contrary conclusion is not sustainable, may have some force but cannot, in the circumstances, be urged as furnishing a foundation for invoking the inherent powers Under Section 482 of the Code.

9. For the foregoing reasons I hold that the application under Section 482 of the Code deserves to be dismissed and is accordingly dismissed.

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