

Devmani Bai Vs. Kalyan Singh

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Court : Madhya Pradesh

Decided On : Sep-09-1996

Reported in : I(1997)DMC40

Judge : Rajeev Gupta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125, 125(3) and 482

Appeal No. : Misc. Criminal Case No. 3810 of 1991

Appellant : Devmani Bai

Respondent : Kalyan Singh

Advocate for Def. : None

Advocate for Pet/Ap. : Tripti Khadia, Adv.

Disposition : Petition allowed

Judgement :

Rajeev Gupta, J.

1. Petitioner Smt. Devmani Bai, who is wife of non-petitioner Kalyan Singh, has filed this petition Under Section 482, Cr. P.C., against the order dated 24.9.1991, passed by Sessions Judge, Satna in Cr. Rev. No. 68 of 1990, whereby the order dated 1.5.1990, passed by J.M.F.C., Satna in M.Cr.C. No. 3 of 1988 dismissing

the petitioner's application for grant of maintenance Under Section 125, Cr.P.C., was affirmed.

2. Petitioner Smt. Devmani Bai, initiated proceedings under the provisions of Section 125, Cr.P.C., against her husband, non-petitioner Kalyan Singh, for seeking maintenance. In the application it was mentioned that the petitioner is 'Legally Wedded Wife' of the non-petitioner, and the non-petitioner had kept a 'Mistress' and has thereafter started subjecting the petitioner to cruelty. The petitioner also stated that since then her husband is neglecting to maintain her. On the above allegations, petitioner Smt. Devmani Bai claimed an amount of Rs. 500/- per month, as maintenance, from her husband.

3. Non-petitioner Kalyan Singh, in his reply to the above application, stated that petitioner Devmani Bai was infact his second wife as one Chunki Bai, who was married to his elder brother Ram Pratap Singh, had become his first wife, after the death of his brother Ram Pratap Singh. It was further stated that as the two wives were not pulling on well, the non-petitioner had partitioned his assets between the two wives and their sons. It was, therefore, pleaded that petitioner Devmani Bai was not entitled to grant of maintenance.

4. The petitioner, in support of her claim, examined Devnandan (AW/1), Devmani AW/2 and Sadhulal (AW/3). The non-petitioner, on the other hand, examined Kalyan Singh (NAW/1), Ramsiya (NAW/2), Ramgopal (NAW/3), Sheetal Prasad Pathak (NAW/4), for proving his case.

5. The Trial Court, on a close scrutiny of the evidence led by the parties, found that:

(a) Petitioner Devmani Bai was 'second wife' of non-petitioner Kalyan Singh, and therefore, was not covered within the meaning of 'wife', Under Section 125, Cr. P.C., and

(b) Petitioner Devmani Bai was able to maintain herself and, therefore, was not entitled to grant of maintenance.

On the above findings, the Trial Court, vide order dated 1.5.1990, dismissed the application filed by the petitioner Under Section 125, Cr. P.C.

6. Being aggrieved of the above dismissal of her application, petitioner/wife Devmani Bai filed a revision petition before the Court of Sessions. The Revisional Court, on re-appreciation of the evidence led by the parties, affirmed the order passed by the Trial Court, dismissing the petitioner's application for grant of maintenance.

7. Before examining the correctness of the finding of the Courts below holding petitioner Devmani Bai as 'Second wife' of non-petitioner Kalyan Singh, this Court deem it necessary to examine the status of Chunki Bai as 'First wife' of Kalyan Singh.

8. Though in para 4 of his reply, Kalyan Singh pleaded that after the death of his brother, he had married Chunki Bai in the customary form of their caste, but in para 1 of his statement in the Court as NAW/1, he simply stated that after the death of his elder brother, his widow (meaning thereby Chunki) was sent to live with him. In his statement in the Court, there is not even a whisper about his having married Chunki Bai in any form much less a legally recognised form.

9. Ramsiya (NAW/2), father of non-petitioner Kalyan Singh, had categorically admitted in para 7 of his statement that petitioner Devmani Bai is the 'First Married' wife of petitioner Kalyan Singh. It was further admitted that widow of Ram Pratap was never married to Kalyan Singh, and she was brought by performing 'Gauna ceremony only.

10. From the above evidence of Kalyan Singh and his father Ramsiya, it clearly emerges out that no legal marriage had ever taken place between Kalyan Singh and Chunki Bai. As Chunki Bai was living with Kalyan Singh without any legal marriage between them, the status of Chunki Bai would be of a 'Mistress' only.

11. The fact of marriage of petitioner Devmani Bai with non-petitioner Kalyan Singh as per the rituals was never in dispute at any stage. As the status of Chunki Bai was that of a 'Mistress' only, petitioner Devmani Bai was obviously the 'First

Legally Wedded Wife' or rather the 'Only Legally Wedded Wife' of non-petitioner Kalyan Singh.

12. In this view of the matter, the finding, recorded by the Courts below that petitioner Devmani Bai being the 'Second wife' of non-petitioner Kalyan Singh, is not covered within the meaning of 'Wife', Under Section 125, Cr. P.C., and is therefore, not entitled to grant of maintenance, is not only erroneous but is perverse to such an extent that interference by this Court, in exercise of its inherent powers Under Section 482, Cr.P.C., inspite of petitioner's revision petition having been dismissed by the Court of Sessions, is warranted.

13. It is an admitted fact mat Chunki Bai was living with Kalyan Singh even after his marriage with petitioner Devmani Bai. From the above discussion, it is established that Chunki Bai was living with Kalyan Singh as his 'Mistress'. Therefore, the explanation to Sub-section (3) of Section 125, Cr.P.C., which reads as under, will come into play :

'Explanation:

If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.'

Therefore, by virtue of the above explanation, petitioner Devmani Bai is entitled to refuse to live with Kalyan Singh and to claim maintenance from him Under Section 125, of the Cr.P.C.

14. Non-petitioner Kalyan Singh in para 15 of his statement categorically admitted that he himself has not given any piece of land, or any other asset to his petitioner/wife, for maintenance. There is no material on record to indicate that petitioner Devmani Bai had any independent source of income for maintaining hereself. The mere suggestion made by the non-petitioner that the petitioner is living separately with her son is not sufficient to disentitle the petitioner from grant of maintenance from her husband. Petitioner Devmani Bai had specifically pleaded in para 6 of her application, fhatshehadno independent source of income and, therefore, was at the verge of starvation. From her statement also, it is apparent

that she has no source of income, and even her son Ramkushal is neglecting to maintain her.

15. For the above discussion, petitioner/wife Devmani Bai is found entitled to grant of maintenance from her husband, non-petitioner Kalyan Singh. The Courts below have gone wrong in dismissing the petitioner's application. On considering the facts of the case in its entirety, this Court is of the opinion that in the context of the present price index, petitioner/wife Devmani Bai is entitled to grant of maintenance of Rs. 500/- per month. As this Court is of the opinion that the Trial Court had gone wrong in dismissing the petitioner's application, filed Under Section 125, Cr.P.C. and the Trial Court ought to have granted maintenance to the petitioner/wife, the above amount of maintenance of Rs. 500/- per month deserves to be made payable from the date of the Trial Court's order, which was passed on 1.5.1990.

16. For the foregoing reasons, the petition, filed by petitioner/wife Devmani Bai, is allowed. The order dated 24.9.1991, passed by Sessions Judge, Satna in Criminal Revision No. 68 of 1990, and the order dated 1.5.1990, passed by Judicial Magistrate First Class, Satna in Misc. Criminal Case No. 3 of 1988, are hereby set aside. The application filed by petitioner/wife Smt. Devmani Bai, Under Section 125, Cr.P.C., is allowed, and non-petitioner Kalyan Singh is directed to pay an amount of Rs. 500/- per month to the petitioner/wife, as maintenance. The above amount of maintenance shall be payable from the date of the Trial Court's order, which was passed on 1.5.1990.