

Kamlabai and anr. Vs. Narayan

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Court : Madhya Pradesh

Decided On : Jul-09-1996

Reported in : I(1997)DMC282

Judge : J.G. Chitre, J.

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

Appeal No. : Criminal Revision No. 215 of 1991

Appellant : Kamlabai and anr.

Respondent : Narayan

Advocate for Def. : None

Advocate for Pet/Ap. : S.S. Garg, Adv.

Disposition : Petition dismissed

Judgement :

J.G. Chitre, J.

1. The petitioner is challenging an order which has been passed by the Addl. Sessions Judge, Shajapur in the matter of Cr. Revision No. 49/90 wherein the learned A.S.J. has set aside the order which was passed by Judicial Magistrate. First Class, Sarangpur in MCC No. 44/84 wherein he granted alimony of Rs.200/-

per month payable from present opponent-Narayan S/o Siddhanath.

2. The petitioner Kamlabai had filed an application for getting alimony from her husband Narayan in view of provisions of Section 125, Cr. P.C. 1973 (hereinafter referred to as Code for convenience) on the ground of neglect and refusal to maintain herself and Ramlatabai, the daughter begotten from Narayan. She had also averred that Narayan has kept a mistress named as Bhagwanti bai treating her as his wife. The learned Judicial Magistrate, First Class, Sarangpur held that Kamlabai was able to prove that having sufficient means, Narayan had neglected and refused to maintain both Kamlabai and Ramlatabai. He had granted alimony in favour of Kamlabai to the tune of Rs. 200/- per month alongwith Rs. 100/- per month for Ramlatabai.

3. The Addl. Sessions Judge, Shajapur while deciding the revision petition mentioned above, set aside the order of alimony which was passed by J.M.F.C., Sarangpur in favour of Kamlabai. However, he maintained the order of alimony which was passed in favour of Ramlatabai.

4. In the present petition the order of A.S.J. deciding the said revision and setting aside the order passed in favour of Kamlabai has been assailed. But the order granting alimony in favour of Ramlatabai has not been assailed so far as quantum is concerned.

5. Mr. S.S. Garg, has been heard, the evidence on record has been examined alongwith other necessary and relevant documents.

6. The evidence of Kamlabai shows that when she was residing with her husband Narayan, Narayan was providing her food and clothes. It is her evidence also that at that time also one Bhawaribai was residing with Narayan in the same house. According to her case said Bhawaribai is a woman with whom Narayan had contracted a second marriage or said Bhawaribai is the woman whom Narayan has kept as mistress. Kamlabai has further stated in her evidence that when Narayan had gone to Indore for work, she left his house and went to stay with her parents. It has also come in her evidence that she is residing with her parents voluntarily.

7 Thus, the evidence of Kamlabai shows that she was not neglected when she was residing in the house of her husband Narayan. On the contrary, Narayan provided her food and clothes and there was ill-treatment to her, at the hands of Narayan. Her evidence further shows that she herself deserted Narayan and resided with her parents voluntarily. At the stage it is pertinent to note that Narayan has stated in his evidence that he is ready and willing to keep and maintain both Kamlabai and daughter Ramlatabai.

8. The witnesses namely Ramsingh, Prabhulal and Ranglal did not prove the case of neglect and refusal to maintain brought forth by Kamlabai against her husband Narayan because their evidence is vague and at variance from the evidence of Kamlabai. The evidence of witnesses Ramsingh and Ranglal is based on hearsay information. The evidence of Prabhulal shows that he is facing some prosecution in the Court. His evidence is also suffering from the infirmity that though he claims to have the knowledge of the association of Narayan with Bhawaribai when he gave the evidence in the Court, he was unable to tell as to whether Bhawaribai was residing at the time when he gave the evidence in the Court. The evidence of Kamlabai shows that Bhawaribai was residing with Narayan and Kamlabai for sufficient days. However, Prabhulal has stated that Bhawaribai stayed in the said house for about 2-4 days. This witness has gone to the extent of saying that in his presence Narayan took away Bhawaribai which sounds very much unnatural.

9. The learned Addl. Sessions Judge has rightly appreciated the evidence of the witnesses and has rightly discarded their evidence. He has rightly concluded that the evidence which has been brought forth by Kamlabai, the petitioner is not sufficient to prove her case for enabling her to get the alimony from her husband. I do not find any error in the way in which the learned Addl. Sessions Judge has appreciated the evidence on record.

10. It is important to note that proviso to Section 125 of the Code provides that-
Explanation-

'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.'

It also provides-

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

'Keeps' indicates that such wife has to prove by reliable evidence that her husband is in association of a woman with whom he had contracted a marriage or to whom he has kept as a mistress. The evidence should be proving such continuous association of the 'husband' with such woman. The evidence should be sufficient to prove such status of that woman and their association to that extent.

11. Thus, I do not find any incorrectness, impropriety and illegality in the order which has been passed by the Addl. Sessions Judge, Shajapur who has dismissed the claim of alimony made by Kamlabai and who has set aside the order which was passed by J.M.F.C. Sarangpur. Kamlabai has not made any prayer for enhancement of alimony which has been granted in favour of her daughter Ramlatabai. Therefore, no question arises in that context, because the order of maintaining alimony which has been granted in favour of Ramlatabai passed by the Addl. Sessions Judge, Shajapur, deserves to be maintained as correct, proper and legal.

12. Thus, the revision petition stands dismissed.

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