

Narendra Mohapatra Vs. Manorama Mohapatra

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Court : Orissa

Decided On : Feb-06-2004

Reported in : 97(2004)CLT471; 2004CriLJ1949; II(2004)DMC626; 2004(I)OLR305

Judge : L. Mohapatra, J.

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

Appeal No. : Criminal Revision No. 453 of 2000

Appellant : Narendra Mohapatra

Respondent : Manorama Mohapatra

Advocate for Def. : S. Biswal and ;D.K. Biswal, Adv.

Advocate for Pet/Ap. : A.K. Nanda, Adv.

Disposition : Revision dismissed

Judgement :

L. Mohapatra, J.

1. This revision is directed against the judgment and order dated 23rd March, 2000 passed by learned Judge, Family Court, Rourkela in Criminal Proceeding No. 53 of 1999 allowing maintenance Rs. 500/- per month to the opposite party in a

proceeding under Section 125, Cr.P.C.

2. The case of the opposite party is that she had married the petitioner in the year 1961 and out of the wedlock three daughters and one son were born. After the marriage the opposite party was residing in her matrimonial house at Rajkanika and the petitioner was residing at Rourkela and was serving as a senior teacher in Rourkela Steel Plant. At that point of time the petitioner developed relationship with one of his students, namely, Basanti Sahoo and started neglecting the opposite party and children. Coming to know about such relationship the opposite party lost her mental balance and taking advantage of such condition, the petitioner in collusion with said Basanti Sahoo took her to Uditnagar Court premises and obtained her signature on a petition meant for divorce on her consent and ultimately also obtained a decree for divorce by fraud. Thereafter, it is alleged that the petitioner married said Basanti Sahoo and they are living as husband and wife. Since the petitioner neglected the opposite party in maintaining her and did not provide any maintenance even after dissolution of the marriage, she filed an application under Section 125, Cr.P.C. claiming maintenance of Rs. 2,500/- per month.

3. The present petitioner appeared before the Court and filed his written statement stating that he had never neglected the opposite party and always maintained her and the children, but the opposite party wanted to give up the worldly pleasure and wanted a divorce as a result of which Title Suit No. 65 of 1987 was filed in the Court of Subordinate Judge, Rourkela for divorce on mutual consent and the same was allowed. After such divorce the petitioner married another lady and stayed with the children. The further case of the petitioner is that after the divorce the opposite party never claimed any maintenance and after long lapse of time she filed an application under Section 125, Cr.P.C. for maintenance.

4. The learned Judge, Family Court, Rourkela on consideration of the evidence on record allowed the prayer and directed payment of maintenance at the rate of Rs. 500/- per month.

5. Mr. Nanda, learned counsel appearing for the petitioner challenged the order granting maintenance on the ground that the opposite party wanted a divorce on

the ground that she did not want to live the worldly life and expressed her desire to renounce the world. This fact was brought to the notice of the Court by way of an affidavit filed by the opposite party and in the said affidavit she also declared that she would not claim any maintenance. On the basis of such affidavit filed by the opposite party the divorce was allowed and therefore after lapse of so many years the application for grant of maintenance could not be entertained by the learned Judge, Family Court.

6. Learned counsel appearing for the opposite party, on the other hand, submitted that because of the involvement of the petitioner with another lady called Basanti Sahoo, the opposite party lost her mental balance and she was forced to sign the petitioner filed for divorce on mutual consent. She also stated that the opposite party has been neglected and the petitioner was not maintaining her even after divorce.

7. No doubt, from the judgment passed in Title Suit No. 65 of 1987 it appears that the opposite party had filed an affidavit expressing her consent for a divorce and during her examination she had stated that she did not want to live the worldly life and wanted to renounce the world and also expressed her desire not to claim any maintenance from the petitioner. Though on the above ground the suit for divorce on mutual consent was allowed, under law she was entitled to maintenance. Reference may be made to a decision of this Court reported in the case of *Snehalata Biswal v. Saroj Kumar Biswal*, 1986 (II) OLR 379. This Court in the aforesaid decision has held that a wife already divorced even by mutual consent or otherwise and if not remarried, is entitled to maintenance. In view of the above, there cannot be any dispute that the opposite party is entitled to maintenance since there is no material on record to show that she has remarried.

8. Now coming to the evidence led before the learned Judge, Family Court it appears that the petitioner has not paid nay amount for maintenance to the opposite party since there was no order granting maintenance in the suit. In view of the above admitted position that the petitioner has not paid any amount towards the maintenance to the opposite party, I do not find any infirmity in the order of the learned Judge, Family Court in granting maintenance to the opposite party. I,

therefore, find no merit in this revision and the same is accordingly dismissed.

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