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Anjali Behera Vs. Lingaraj Behera

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Court : Orissa

Decided On : Nov-17-1989

Reported in : 69(1990)CLT259; II(1989)DMC28

Judge : V. Gopalaswamy, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 125

Appeal No. : Criminal Revision No. 667 of 1988

Appellant : Anjali Behera

Respondent : Lingaraj Behera

Advocate for Def. : S.K. Padhi, Adv.

Advocate for Pet/Ap. : A. Routray, Adv.

Disposition : Revision allowed

Judgement :

V. Gopalaswamy, J.

1. This revision is preferred against the judgment of the learned Sessions Judge, Phulbani, dated 7-9-1988 quashing the order of the learned S.D.J.M., Baliguda, dated 13-8-1987 directing the present opposite party-husband to pay maintenance to the petitioner-wife at the rate of Rs. 100/- per month.

2. The petitioner is the legally married wife of the opposite party. The petitioner alleges that after her marriage with the opposite party, she went to the house of the opposite party to live with him as his wife, but soon after he started ill-treating her and ultimately after a few days the opposite party and his elder brother Indra Behera had forcibly removed the gold ornaments from her person and drove her out of their house and since then the opposite party was not prepared to receive her back and so she was compelled to reside with her parents and was ultimately driven to file the petition claiming maintenance. The opposite party asserts that the petitioner had left his house out of her own accord as she was mad. Both the parties adduced evidence in support of their respective contentions. On a consideration of the evidence adduced by the parties, the learned S.D.J.M. allowed the wife's petition under Section 125, Cr.P.C. but as the learned Sessions Judge, on revision, set aside order in her favour, she preferred the present revision before this court.

3. That the petitioner is the legally married wife of the opposite party is admitted by the opposite party. According to the petitioner she was driven out of the house by the opposite party and his elder brother, whereas the case of the opposite party is that the petitioner had left his house of her own accord. That the petitioner did not live in the house of the opposite party for more than a few days, is also not disputed. It is in this background that the evidence adduced by the parties has to be considered.

4. The evidence of the petitioner, who examined herself as PW 2, shows that soon after the marriage of the opposite party, she went to the house of the opposite party, taking with her the articles mentioned in the list, Ext. 1, as dowry. The petitioner deposed that after the third day of her marriage, her husband's elder brother (OPW No. 2) forcibly removed all the gold ornaments worn by her and thereafter the opposite party and his elder brother (OPW No. 2) drove her out of the house when she had to take shelter in the house of one Hadi Behera. PW 4 is the father of the petitioner. PWs. 1 and 3 were examined as independent witnesses. There is nothing in the evidence of PWs. 1, 3 and 4 to discredit their testimony that on the date of marriage the opposite party and his brother quarrelled with the petitioner's father on the ground that the quantum of dowry

given to them was less. The evidence of the petitioner that after the gold ornaments worn by her were forcibly taken away by the opposite party's elder brother, she was driven out of the house of her husband, has not been shaken in cross-examination. Her version that after she was so driven away, she took shelter in the house of one Hadi Behera is corroborated by PW 1, when he stated that on receiving information from the petitioner about her being driven out of her husband's house, he went to the house of Hadi Behera and accompanied her to the house of her father. There is no acceptable explanation from the side of the opposite party as to why after the date of her marriage, after residing in the house of the opposite party only for few days, she had left the house of her husband of her own accord. Normally, a newly married wife would not be leaving the house of her husband voluntarily unless there is a strong reason for the same. So the probabilities in the case also support the version of the petitioner that she was forcibly driven out of the house of the opposite party. The evidence of the PWs. shows that a Panchayat was held subsequently for attempting a reconciliation between the parties. Ext. 2, duly proved by PW 1, is a written undertaking given by the opposite party, which not only proves that there was such Panchayat but also shows that the opposite party, while admitting before the 'Bhadralogs' that he had earlier misbehaved with the petitioner, had undertaken that he would behave with her properly in future, failing which the dowry articles received from her would be returned to her. The reliable evidence of the PWs. shows that even though such a Panchayat was held, the opposite party was not prepared to receive her back. That the petitioner has all along been residing in the house of her parents is not disputed by the opposite party. There is no reliable evidence from the side of the opposite party to show that the opposite party has made a genuine attempt to invite the petitioner to his house to lead a family life with her. In view of the conduct of the opposite party, the petitioner had no other alternative except to reside with her parents and in view of the facts and circumstances of the case, the learned S.D.J.M. was justified in awarding maintenance in favour of the petitioner.

5. The learned Sessions Judge made his own independent assessment of the evidence on record and held that the petitioner was not entitled to claim any maintenance. While considering the evidence, the learned Sessions Judge had given undue weightage to certain minor discrepancies pointed out in the evidence

of the prosecution witnesses. The learned Sessions Judge appears to be of the view that as the petitioner alleged that it was her husband's elder brother, who forcibly removed the gold ornaments from her person, the opposite party cannot be held responsible for the same. The opposite party, as the husband of the petitioner, was bound to protect her property and had a moral responsibility to come to her rescue when any person attempts to insult her even if the person who tries to insult her happens to be his own brother. On the other hand, the evidence discloses that the opposite party's elder brother forcibly removed the gold ornaments from the person of the petitioner with the connivance of the opposite party. The gold ornaments forcibly removed by the opposite party's elder brother from the person of the petitioner belong to her and neither the opposite party nor his brother had any justification to retain the same without returning them to her. In this context, it is difficult to agree with the learned Sessions Judge when he observed, 'She cannot insist on the return of the ornaments to her by her husband before she would go and live with him. On this ground she has no justification to refuse to go and live with her husband.' Likewise, I am unable to accept the view of the learned Sessions Judge that 'The mere act that he (the husband) is cold and indifferent towards her (the wife) is not a sufficient reason for her to refuse to live with him.' So the very approach of the learned Sessions Judge in the matter of appreciation is far from satisfactory. From the conduct of the opposite party, the petitioner had a reasonable apprehension that she was likely to be physically harmed in case she goes to her husband's house and so she had no other alternative except to live with her parents.

6. Considering the background of the case, the husband's offer made during the course of the enquiry to take his wife back to his house appears to be without bona fides and made only for the purpose of defeating the petitioner's claim for maintenance. Unless a wife could reasonably hope to live with decency and dignity under the roof of her husband, the wife is justified in refusing to acceed to the offer of the husband to receive her back.

7. In Smt. Khatoon v. Mohd. Yamin, AIR 1982 Supreme Court 853, where the husband wrote a letter to his wife asking her to come back to him, otherwise the latter would be treated as divorced, the Supreme Court held that as the letter was

couched in most discourteous terms and amounted to a clear threat to divorce the wife and sought to obtain her consent to live with him under duress, this was a sufficient reason for the wife for refusing to live with her husband.

8. The learned S.D.J.M. after considering the evidence on record found that the petitioner was entitled to maintenance from the opposite party-husband. The orders granting maintenance to helpless wives and children are not to be lightly interfered with in revision, if no grave illegality or manifest injustice is made out. (See Balmiki Naik v. Labanga Naik, 1988(1) OCR 468). In view of my above discussion in the preceding paragraphs it is seen that the learned S.D.J.M. while passing the order awarding maintenance in favour of the petitioner wife committed no such illegality so as to justify interference by the learned Sessions Judge in exercise of his revisional powers. Hence the judgment of the learned Sessions Judge quashing the order of the learned S.D.J.M. is hereby set aside and consequently the order of the learned S.D.J.M. directing the present opposite party-husband to pay maintenance to the petitioner-wife at the rate of 100/- per month is hereby restored.

Accordingly, the revision is allowed.

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