

Alaka Bhoi Vs. Santosh Bhoi

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Court : Orissa

Decided On : Nov-10-1993

Reported in : I(1994)DMC454

Judge : L. Rath, J.

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

Appeal No. : Crl. Misc. No. 1320 of 1991

Appellant : Alaka Bhoi

Respondent : Santosh Bhoi

Advocate for Def. : Nemo

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

Judgement :

L. Rath, J.

1.This application under Section 482 Cr.P.C. is directed against the original order of the S.D.J.M., Sambalpur dismissing her application under Section 125 Cr.P.C claiming maintenance from the opposite party and the revisional order of the Additional Sessions Judge, Sambalpur confirming the order of the S.D.J.M. The petition registered as Criminal Misc. Case No. 52 of 1988 put forth a case that the

parties were married but the petitioner was being neglected and not given food or clothings as she had not brought sufficient dowry. During the Dasehara of 1987 when she had been to her parents' house, she fell ill. After recovery when she came to her husband's house, she was mercilessly beaten and driven out of the house and since then she has been staying with her parents. The opposite party filed show-cause in the case taking the stand, while admitting the marriage, that the petitioner was a unchaste lady and had developed illicit relationship with one Bhramarbar Mahakud besides stating that he was willing to maintain her if she would come and reside with him. Both sides led evidence, but the Trial Court analysing the same though held that the opposite party had failed to prove illicit relationship of the petitioner with Bhramarbar Mahakud yet concluded that the petitioner had not established the fact of ill-treatment and torture to her and that there was no lawful excuse for her living apart from the husband. Being of that view he dismissed the petition for maintenance which order was upheld in appeal.

2. The sole submission raised by Mr. Routray is that since the opposite party came with the case of the petitioner being unchaste and such plea was not found to be correct, that fact itself entitled the petitioner to maintenance. Reliance for the purpose is placed on, 67(1989) CLT 392, (Smt. Pramila Dei @ Kunj v. Sanatan Jena), wherein it was held that if an allegation of unchastity is made against the wife and payment of maintenance is sought to be avoided on the ground of her living in adultery but the plea fails, the plea by itself is sufficient to entitle her to remain apart from her husband. The decision relied upon was however held by the learned S.D.J.M. not to be applicable to the present case since though the opposite party had taken the plea of unchastity of the petitioner, yet had abandoned the same and had not led any evidence on the issue. Similar view was also taken by the revisional Court

3. The view adopted by both the Courts below is highly erroneous and contrary to the reported decision. The pleadings of the parties are not idle phrases or words but instead reveal the stand adopted by them in pursuit of their cases. Once a stand is taken, the import of it is made known not only to the other side but to the whole world who cares to look at it. It is another thing that a plea once taken is not pursued depending upon the party which has taken it. But that by itself would not

in any way diminish the injury made. What was observed in Pramila Dei's case (supra) was that the plea of unchastity causes mental anguish of the deepest character with grave psychio assault and shatters the marital peace and makes living together incompatible. Hence it makes no difference if the opposite party does not pursue the stand. The view taken in Pramila Dei's case was also lateron followed in (1991) 4 OCR 465, (Anupam Pradhan v. Sultan Pradhan), and even in an earlier case in 59 (1985) CLT 11, (Ananta Bhottamisra v. Smt. Saraswati Bhottamisra), the same view had been taken. In that view of the matter, both the judgments of the Courts below are not sustainable and are liable to be quashed and the petitioner declared as entitled to maintenance.

4. Since the learned S.D.J.M. did not address himself on the question of quantum of maintenance and left the question open, this case is remanded to him for determining the quantum of maintenance the petitioner is entitled to. The L.C.Rs. be sent back. The learned S.D.J.M. shall dispose of the matter within three months of receipt of the L.C.R. from this Court.

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