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Namitarani Bose Vs. Dipak Kumar Bose

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Court : Orissa

Decided On : Feb-28-1986

Reported in : 61(1986)CLT448; 1986(I)OLR402

Judge : G.B. Pattnaik, J.

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

Appeal No. : Criminal Revision No. 106 of 1985 and 111 of 1986

Appellant : Namitarani Bose;dipak Kumar Bose

Respondent : Dipak Kumar Bose;namitarani Bose

Advocate for Def. : M.M. Sahu, Adv. in Cr. Rev. No. 106/85, ;G.N. Mohapatra and U.C. Mohanty in Cr. Rev. No. 111/86

Advocate for Pet/Ap. : G.N. Mohapatra and U.C. Mohanty in Cr. Rev. No. 106/85, ;M.M. Sahu, Adv. in Cr. Rev. No. 111/86

Judgement :

G.B. Pattnaik, J.

1. Petitioner who is the wife and had filed an application under Section 125 of the Code of Criminal Procedure (hereinafter referred to as the Code has prayed for enhancement of monthly maintenance granted by the learned Magistrate. Before

this case was taken up for hearing on the request of the counsel for the opposite party, the records of Criminal Revision No. 37 of 1985 filed by the husband challenging the order of the Magistrate were brought from the Court of the Second Additional Sessions Judge Cuttack and the said revision after being registered in this Court as Criminal Revision No. 111 of 1986 was also heard along with Criminal Revision No. 106 of 1985 and both the cases are being disposed of by this common judgment.

2. The averments in the application filed under Section 125 of the Code are to the effect that the marriage between the petitioner and opposite party took place on 4.5.1974 and both of them continued to live as husband and wife till June 1975, though they were not pulling on well with each other on account of failure to pay the required dowry by the petitioner's parents. The opposite party, the husband, illtreated the petitioner and ultimately assaulted her. At last, the opposite party sent the petitioner to her father's house where she has been staying all along and she has been neglected by her husband. In the meantime, on the application of the husband under Section 13 of the Hindu Marriage Act, a decree for divorce has been passed. As the petitioner does not have sufficient means to maintain herself, she clamed maintenance by filing the present application. According to the petitioner, the opposite party gets a monthly salary of Rs. 1,000/- and that apart, he has some houses in the town of Cuttack which he has given on rent and gets about Rs. 1,800/-per month from the house rent. She, therefore claimed Rs. 500/- per month as maintenance allowance and Rs.15,000/-towards medical expenses.

3. The opposite party denied the allegations made in the application and took the stand that the petitioner had left him on her own accord and even though the opposite party tried to bring her back but was unsuccessful. Ultimately, he was forced to file the application for divorce and has obtained a decree thereunder. The opposite party denied to have neglected the petitioner at any point of time and further asserted that the petitioner had sufficient means to maintain herself and, therefore, she was not entitled to claim maintenance invoking the provisions of Section 125 of the Code.

4. Parties led evidence before the learned Magistrate and on consideration of the materials, the learned Magistrate came to hold that the petitioner was the legally married wife of opposite party and he had refused to maintain her. On the question of petitioner's inability to maintain herself, the learned Magistrate came to hold that though she gets something from tuition, but the exact amount was not known and, therefore, she must be held to be entitled to receive maintenance within the ambit of Section 125 of the Code. After coming to the conclusion hat the petitioner is entitled to receive maintenance, the learned Magistrate also considered the monthly income of the husband-opposite party and ultimately directed that the petitioner should get Rs. 75/- per month towards maintenance from the date of institution of her application The legality of this order has been challenged by the husband in Criminal Revision No. 37 of 1985 before the learned Second Additional Sessions Judge Cuttack the records of which were brought back to this Court by order dated 18.2.1986 and the said revision has been numbered as Criminal Revision No 111 of 1986.

5. Mr. Sahu, the learned counsel appearing for the husband-opposite party contends that one of the pre-conditions of entitlement to receive maintenance under Section 125 of the Code is that the wife is unable to maintain herself. According to him since in this case it is proved that the wife has some income from tuition the provision of Section 125 of the Code is not attracted and, therefore, the order of the learned Magistrate must be set aside.

6. Section 125 of the Code is a provision intended to prevent vagrancy and the main object is to enable discarded wives to secure the relief of maintenance. The obligation of a husband to maintain his wife can be implemented by a Magistrate in taking a summary action, subject of course to the condition that the ingredients of the said provisions are fully satisfied. It provides speedy remedy against starvation and gives effect to the fundamental and natural duties of a man to maintain his wife, children and parents. The learned Magistrate has found in the present case that the wife has been refused maintenance and the husband has sufficient means to maintain Mr. Sahu appearing for the husband-opposite party does not challenge the said findings. The only point for consideration is, therefore, whether in the facts and circumstances of the present case, it can be said that the wife is unable to

maintain herself. Mr. Sahu's main contention is that the wife has some income from tuition and therefore, she cannot be said to be unable to maintain herself. The phrase 'unable to maintain herself means unable to earn a livelihood. This obviously means that the earning is such that the wife can maintain herself without depending upon others. But merely because a deserted wife earns a paltry sum by engaging herself in some profession which may not even be sufficient to give one meal per day, it cannot be said that she is able to maintain herself with the income she earns. The income must be such which would be sufficient for an ordinary person to be maintained out of the same. The evidence in the present case discloses that the petitioner earns some money by doing tuition. But what is the exact amount she earns from the tuition is not on record Keeping in view the cost of living in the present day and without any definite evidence as to the income of the wife from the so-called tuition, it is not desirable and possible to hold that she has sufficient income so as to disentitle her to receive maintenance under Section 125 of the Code. In this view of the matter, in my opinion, there is no force in the contention of Mr. Sahu, the learned counsel for the husband-opposite party and, therefore, Criminal Revision No. 37 of 1985 before the Second Additional Sessions Judge (Criminal Revision No. 111 of 1986 of this Court) preferred by the husband must be dismissed.

7. Coming to the other revision filed by the wife-petitioner in this Court (Cr. Rev. No. 106 of 1985), the question for consideration is whether in the facts and circumstances of the present case, a monthly maintenance of Rs. 75/- can be held to be reasonable. 7 he opposite party-husband is a clerk saving under the Government of India. The basic salary is about Rs. 500/- If the allowances of a Government servant are taken into consideration, the total income would be more than Rs. 1,000/-. That apart, there is positive assertion by the wife-petitioner that the husband gets some income from the houses given on rent. Taking into consideration all these materials, in my opinion a sum of Rs. 75/- is inadequate and in the fitness of things, the petitioner-wife must get a maintenance of Rs. 100/- a month. I would, therefore, hold that the petitioner is entitled to receive monthly maintenance of rupees one hundred and this amount is payable with effect from the date of the application made by her as has been held by the learned Magistrate. Criminal Revision No. 106 of 1985 must accordingly be allowed.

8. In the ultimate result, therefore, Criminal Revision No. 106 of 1985 is allowed and Criminal Revision No. 37 of 1985 which has been brought over to this Court from the Court of the Second Additional Sessions Judge Cuttack and registered here as Criminal Revision No. 111 of 1986 is dismissed.

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