

Bimala Dei Vs. Karna Mulia

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Court : Orissa

Decided On : Jul-18-1985

Reported in : 60(1985)CLT224; 1985(II)OLR206

Judge : G.B. Pattnaik, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 125(3)

Appeal No. : Criminal Revision No. 68 of 1982

Appellant : Bimala Dei

Respondent : Karna Mulia

Advocate for Def. : R.K. Mohanty, Adv.

Advocate for Pet/Ap. : S.K. Mund, Adv.

Disposition : Petition dismissed

Judgement :

G.B. Pattnaik, J.

1. Petitioner is the legally married wife of the opposite party who had obtained an order of monthly maintenance of Rs. 60/- in an application filed under Section 125 of the Code of Criminal Procedure (hereinafter referred to as the 'Code'). The application for maintenance was filed on 24. 6. 1977 and the Magistrate allowed

the said application by order dated 24. 4.1978. Against the same order, the husband carried a revision to the Sessions Judge and the learned Sessions Judge dismissed the same by order dated 13. 9.1979. Thereafter, on 14. 11. 1979, an application was filed by the wife invoicing the Magistrate's jurisdiction under Sub-sec. (3) of Section 125 of the Code. The learned Magistrate by the impugned order has limited the claim of the wife to a period of one year from- the date of filing of the application, i. e., upto 14. 11. 1978 on the ground that under the first proviso to Sub-sec. (3) of Section 125 of the Code, no warrant can be issued for recovery of any amount due under the section unless the application be made to the Court to levy such amount within a period of one year from the date on which it became due.

2. Mr. Mund, the learned Counsel for the petitioner contends that the provision of Sub-sec.

(3) of Section 125 of the Code should be given a liberal construction and the fact that a revision was pending in the Court of the Sessions Judge should be taken as a ground for which the wife could not file any application under Sub-sec.

(3) of Section 125 of the Code. In support of his contention, he places reliance on the decision of the Gujarat High Court in the case of (Maniben alias Madhuban Motigir Goswami and Anr. v. Manibhai Mohangiri Goswami and Anr.) 1983(2) Crimes,

64. Undoubtedly, the decision supports Mr. Mund's contention fully. But with respect, I am unable to agree with the view taken by the learned Single Judge of the Gujarat High Court in the aforesaid case. No doubt, Section 125 is a beneficial provision intended to help the wife being saved from destitution in a case where the husband neglects or refuses to maintain the wife and, therefore, ordinarily, a liberal interpretation to the said provision can be given, but not at the cost of violence to the express language used in the provision. The proviso to Sub-sec.

(3) of Section 125 of the Code in clear and categorical terms puts an embargo on the power of the Magistrate to issue any warrant for recovery of the amount due unless the application is made to the Court within a period of one year from the

date on which it became due. Therefore, the Magistrate has a duty to find out the date on which the amount became due. Admittedly, the order of the Magistrate in this case granting maintenance is dated

26.

4. 1978. The matter remained pending in revision before the learned Sessions Judge for more than a year, but all the same it cannot be said that the amount in question was not due during that period. It is conceded before me that the learned Sessions Judge had not passed any order staying the operation of the Magistrate's order. In that view of the matter it is not possible to hold that the amount in question did not become due during the period the matter was pending in revision before the learned Sessions Judge. In fact, a learned Single Judge of this Court in the case of (Jagannath Patra v. Parnamashi Saraf and Anr.), A. I. R. 1968 Orissa, 35, has considered this aspect under the parimateria provision of the old Code of Criminal Procedure contained in Proviso 2 of Sub-sec.

(3) of Section 4cS. Though there has been no discussion on the point, yet the decision of the case on the facts in that case squarely supports the view I am taking in this case. In this view of the matter, I am of the view that the impugned order of the learned Magistrate dated

23.

11. 1981 does not suffer from any infirmity. Accordingly, this Criminal Revision is dismissed.

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