

Kuni Patro Vs. Keshab Patro

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Court : Orissa

Decided On : Sep-05-1994

Reported in : 1994(II)OLR586

Judge : K.L. Issrani, J.

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

Appeal No. : Criminal Misc. Case No. 53 of 1989

Appellant : Kuni Patro

Respondent : Keshab Patro

Advocate for Def. : None

Advocate for Pet/Ap. : A.S. Naidu, P. Mohanty, P.K. Dora and P.K. Mohapatra

Disposition : Petition allowed

Judgement :

K.L. Issrani, J.

1. This petition has been filed by the wife against the orders passed by the Courts below rejecting her application for grant of maintenance Under Section 125 of the Criminal Procedure Code on the ground that in her letters Exts. A and B she refused to come and live with her husband (opposite party).

2. Submission of the learned counsel for the petitioner is that in spite of her letters and approaches and her categorical statement that she is ready and willing to live with the opposite party and perform her conjugal rights, the Courts below have refused for grant of maintenance which is patently illegal and is liable to be set aside.

3. There is no appearance on behalf of the husband-opposite party though served. I have gone through the statement of witnesses and also the letters (Exts. A and B). In the written-statement, the husband challenges the chastity of the wife and states that she is of bad character. It has also come on record that it was the opposite party- husband who left her with her parents in February, 1985. There is nothing on record to show the steps taken by the husband to bring her back. There is also nothing on record to prove that the wife-petitioner is unchaste. On the contrary, the petitioner-wife in her statement has categorically stated that she is ready and willing to live with the opposite party-husband and perform her conjugal rights. From the statement of the father of the opposite party, at least this much has come that the family members had hatred towards the petitioner. But, there is no evidence led by the opposite party to prove either that the petitioner was unchaste or that there is reason to have hatred against her. The Courts below ignored the material fact that in the Court the petitioner-wife made categorical statement that she is ready and willing to live with the opposite party and perform her conjugal rights and the opposite party specifically denied that even if she is ready and willing to come to him, he is not prepared to keep her. Therefore, the Courts below are patently wrong in refusing maintenance to the petitioner- wife only on the grounds mentioned in the letters Exts. A and B. The Courts below have further ignored the fact that the allegation of unchastity against the wife itself leads to a ground to live separately and claim maintenance. In view of the fact that no step has been taken by the opposite party-husband for filing a suit for restitution of conjugal rights or divorce, the opposite party-husband cannot escape his liability of maintaining the wife-petitioner.

4. Courts below have also ignored to assess the income of the opposite party and the quantum which the petitioner is entitled to receive- The case of the opposite party was that the petitioner is earning Rs. PW- to Rs. 60/- per day by selling

vegetables which fact has been denied by the petitioner and no such evidence has also been led by the opposite party On the contrary, the opposite party admits that he is a Junior Engineer and gets Rs. 1.200/- per month after all deductions. In view of the fact that the petitioner-wife has claimed Rs 500 - per month. I think it just and proper to grant her maintenance at the rate of Rs. 400/- (Rupees four hundred) per month from the date of her application. Consequently, the petition is allowed. The orders passed by the Courts below are set aside.

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