

Malati Sahu Vs. Bhagyadhar Sahu

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Court : Orissa

Decided On : Feb-18-1991

Reported in : 1991(I)OLR331

Judge : D.P. Mohapatra, J.

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

Appeal No. : Criminal Revision No. 488 of 1988

Appellant : Malati Sahu

Respondent : Bhagyadhar Sahu

Advocate for Def. : B.K. Mohanty and R.K. Nayak

Advocate for Pet/Ap. : D. Panda and G.C. Mohapatra

Disposition : Revision allowed

Judgement :

D.P. Mohapatra, J.

1. The petitioner Malati Sahu is the wife of the opposite party Bhagyadhar Sahu. She filed this revision petition Under Section 401, Criminal Procedure Code (Cr. P. C.) assailing the order passed by the Subdivisional Judicial Magistrate, Jaipur (S. D. J. M.) rejecting her application for maintenance Under Section 125, Cr. P. C.

2. The case of the petitioner, shorn of unnecessary details, was that she married the opposite party in the month of Baisakh, 1978 according to Hindu customs and rites: they lived happily as husband and wife for about two years; a son was born to them in 1980. Thereafter the opposite party wanted her to get Rs. 5000/- from her parents since the dowry given at the time of her marriage was inadequate. When she protested he assaulted her and drove her out from his house. A complaint was lodged with the Executive Magistrate and the police was directed to enquire into the matter. On the intervention of the police and local gentries the dispute was pitched up on the opposite party and his family members undertaking that there will be no further incident of assault or ill-treatment to her. Accepting the assurance in good faith she returned to her marital home. After about two weeks she was again ill-treated, assaulted and forced to leave the house in August, 1980. She alleged that her ornaments were taken away and the child was left with her. Since then she has been living with her parents wholly depending on them. Sometime in 1981 when the wife of the younger brother of the opposite party died the petitioner was taken to her husband's house for the Sudhi ceremony and immediately after the ceremony was over she was asked to leave the house with the threat that if she tried, to return she will be murdered.., It was the further case of the petitioner that the opposite party has eight to ten acres of good cultivable land on which different crops and vegetables are grown; he has also some fruit bearing trees from which he earns a substantial income. His total income, according to the petitioner, is about Rs. 7,000/- to Rs. 8000/- per month. Though he has the means the opposite party has never cared to maintain the petitioner and her child,, The., petitioner has no. separate income to maintain herself and her child. Under such compelling circumstances she filed the application Under Section 125, Cr. P. C claiming maintenance at the rate of Rs. 700/- per month for herself and her minor child.

3. The opposite,. party contested the case. He admitted his marriage with the petitioner and the . birth of the male child out of the wedlock. He denied the allegations, of assault, ill-treatment and refusal to give her the ornaments which her. parents had given to her. His case was that after the birth of the child the petitioner wanted him to get separated from his parents which suggestion, the opposite party, bluntly refused. Then she left his house on her own accord; in spite

of repeated efforts by him she did. not agree to return to his house. In essence, his case, was that the petitioner deserted him without any ' reasonable cause. He stated in the counter to the petition Under Section 125, Cr. P. C that he is. ready and willing so take back the petitioner and the child to his house.

4. On behalf of the petitioner four witnesses including herself were examined. The opp, party examined himself as the sole witness in support of his case.

5. The learned S. D. J. M. considering the evidence on record did not believe the witnesses examined on behalf of the petitioner and held that she failed to establish her ptea of ill-treatment and negligence and therefore she was not entitled to any maintenance from the opp party.

6. The main thrust of the arguments of the learned counsel for the petitioner was that the decision of the learned S. D J M. is vitiated on account of misconception of the legal position regarding wife's entitlement for maintenance under Sac. 125, Cr. P. C. and the perverse finding of fact recorded by him. The learned counsel for the opp. party on the other hand supported the impugned order.

7. The scope and ambit of Section 125, Cr. P. C. is fairly well settled by now. The section is intended to help a deserted wife to avoid destitution, starvation and vagrancy. Therefore the provisions in the section are to be liberally construed. The wife is entitled to an order for maintenance from her husband on showing that he having sufficient means has neglected or refused to maintain her who has no means to maintain herself. The right of a wife to maintenance is an incidence of her status. The phrase 'neglects or refuses to maintain' is to be construed liberally. No straight jacket formula can be laid down to answer he question whether the wife has been able to establish that her husband has neglected or refused to maintain her. It would depend on the facts mi circumstances of the case in question. A situation may arise in which It is no longer possible for the wife to continue to live in her husband's house with dignity, prestige and self-respect Any such situation, in my view, will satisfy the requirement of Sub-sec (1) of Section 125. Such situation may also arise in different circumstances, like physical assault or torture of the wife, creating a situation in the family which makes it unbearable for her to live with dignity; husband's refusal to discharge his marital obligations;

lack of warmth of feeling towards her from the husband and members of his family.' Even long separation between the spouses without acceptable material to show any genuine effort made on behalf of the husband to persuade his wife to live with him may be sufficient to draw an inference of neglect and refusal to maintain. Therefore it will neither be legal nor proper so approach a case with a fixed idea to find out whether the allegation of assault or physical torture has been successfully established by the petitioner-wife. This may be established by direct proof or by drawing reasonable inference from the circumstances established by evidence.

In assessing the quantum of maintenance some salient features to be considered, without being intending to be exhaustive, are the needs/ requirements of the wife, the status of the husband's family, the standard of life she would have led had she continued in her marital home; etc. Under the second proviso to Sub-section (3) of Section 125, Cr. P. C it is laid down that if a husband offers to maintain his wife on condition of her living with him and she refuses to live with him the Magistrate may consider any of the grounds of refusal stated by her and may make an order if he is satisfied that there is just ground for so doing. Sub-section (1) provides that no wife shall be entitled to receive an allowance from her husband under the section if she is living in adultery, or is without any sufficient reason she refuses to live with her husband, or if they are living separately by mutual consent. On a reading, of the provisions in Sub-sec (4) it is clear that these are in the nature of exceptions to the general rule embodied in Sub-sec :'(1) of Section 125.

8. Coming to the case of the petitioner, three other witnesses have corroborated her evidence that she was repeatedly assaulted which forced her to leave her husband's house; on the attempt of the local police the dispute had been patched up, but the assurance of good behavior given by the opp. party and members of his family was not honoured and ill-treatment and assault was again taken recourse to. My attention has not been drawn to anything in their evidence to cast doubt about their credibility. No good ground has been stated that the petitioner will gain by making false allegations against the opp. party which would compel her to live separately from her husband for rest of her life, Further, for about five years prior to the filing of the application under Sec 125, Cr. P. C. the parties had

been living separately. There is no evidence except the bald assertion of the opp. party that during this period he had made any sincere and genuine effort to bring back the petitioner to his house. It is relevant to note here that the opp. party pleaded the specific case the petitioner left his house Voluntarily and refused, to return there despite his efforts for the purpose. This he signally failed to establish.

On perusal of the materials on record it is my considered view that the petitioner has made out a case of neglect and refusal to maintain her by the opp. party.

9. On perusal of the impugned order, it appears that the learned Magistrate required the petitioner to establish to the hilt her case of physical assault, torture and compulsion to leave her husband's house. This erroneous approach vitiated the judgment. Further, the learned Magistrate should have considered the question of quantum of maintenance which he did not feel the necessity to do because of his finding that the petitioner was not entitled to any maintenance. He overlooked the position that this finding was not final ; it was liable to be reversed by superior Court and in that case the question of fixing the amount of maintenance will -arise. Since I have held that the petitioner is legally entitled to maintenance it is necessary to consider to reasonable amount of maintenance to be fixed. On this point also the evidence is almost one sided. In this regard the case of the petitioner which is supported by evidence of her witnesses is that the opp, party owns about 8 to 10 acres of agricultural land on which various crops are raised and his total income is about Rs 7000/- to Rs 8000/- per month; he has also a four-roomed pucca house where he lives with the other members of his family. The denial to this has come through the lone statement of the opp, party who has stated that he has only about one and half acres of agricultural land and he makes his living by working as a daily labourer earning Rs. 8/- per day. On consideration, I find it difficult to accept the statement of the opp, party. Keeping in view the requirements of the petitioner and her son for sustenance in the prevailing condition of high prices of essential commodities I would fix Rs. 403/- per month as maintenance.

10. In the result, the revision petition is allowed, the impugned order is set aside, the petitioner's application for maintenance under Sec 125, Cr. P. C. is allowed

and the opp. party is directed to pay her maintenance for herself and her child at the rate of Rs, 400/- per month.

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