

Dolly Roy Vs. Raja Roy

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Court : Orissa

Decided On : Sep-16-2002

Reported in : I(2003)DMC44

Judge : B. Panigrahi and ;P.K. Misra, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 9; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 125

Appeal No. : Civil Appeal No. 5 of 1999 and CrI. Revision No. 257 of 1999

Appellant : Dolly Roy

Respondent : Raja Roy

Advocate for Def. : S.K. Padhi and ;Deepali Mohapatra, Adv.

Advocate for Pet/Ap. : G.B. Jena, ;S. Jena, ;B.P. Pradhan and ;S. Mohapatra, Adv.

Judgement :

B. Panigrahi, J.

1. In the aforementioned civil appeal and criminal revision the appellant-wife has challenged the legality, validity and propriety of the judgment and order passed by the learned Judge, Family Court, Rourkela dated 16.12.1998 and 25.9.1998 in

Civil Proceeding No. 88/1997 and Criminal Proceeding No. 64/1997 respectively allowing the prayer of the respondent-husband for restitution of conjugal right Under Section 9 of the Hindu Marriage Act and rejecting the prayer of the petitioner-wife for maintenance Under Section 125 of the Code of Criminal Procedure.

2. The factual matrix leading to these cases is as follows :

The marriage between the appellant and the respondent was solemnised on 26.11.1995 according to Hindu rites and customs. Their' marriage was consummated immediately thereafter. The appellant-wife joined her matrimonial house and stay there for about a year. During the period' of gestation she came back to her parents' house. Before birth of the child she was taken to Ispat General Hospital, Rourkela and a female child was born on 17.10.1996. After the birth of the female child the appellant went back to her parents' house with the child. It is alleged by the respondent that even after great amount of persuasion, the appellant did not join his company and thereafter he had finally sent a registered notice calling upon the appellant-wife to join with him on 20.3.1997. The appellant-wife also replied to such notice saying that she was subjected to torture, harassment and cruelty, therefore, she was unwilling to join the respondent. Within a span of two months, i.e. on 15.5.1997 the respondent-husband filed an application before the learned Judge, Family Court, Rourkela for granting a decree of restitution of conjugal rights and dissolution of marriage. The learned Judge, Family Court, on the basis of the evidence of the respondent-husband and also the wife, granted a decree of restitution of conjugal rights. That is how the appellant-wife has challenged the said order.

3. During pendency of the proceeding the appellant-wife filed an application for interim maintenance Under Section 125 of the Code of Criminal Procedure in which an amount of Rs. 400/- was allowed to the daughter only, but not to the appellant-wife. Therefore, she has also challenged the sustainability of the order passed Under Section 125 of the Code of Criminal Procedure.

4. With the consent of both parties, the civil appeal as well as the criminal revision were taken up for hearing and are disposed of hereunder.

5. So far as the marriage between the spouses is concerned, it has been admitted by both the parties and out of their lawful wedlock a daughter was born to them. The only question that has to be decided in this case is whether the appellant had voluntarily withdrawn from the society of the respondent or not. In this case it appears from the evidence of the respondent-husband that the appellant-wife's mother suggested to keep the appellant for a period of two months further after first delivery which are quite normal. Immediately after the appellant gave birth to a female child, it was unexpected to leave her to the matrimonial house. On January, 14, 1997 the respondent and his mother went to the appellant's house and called her family members to their house. Accordingly, they also attended the respondent's house. The respondent-husband asked the parents of the appellant to send their daughter-appellant. But her parents suggested that they would send their daughter after three months. Even after such period lapsed, when the appellant did not join the matrimonial house, without taking any effect at his behest the respondent directly sent a registered notice asking her to join him to which the appellant replied and did not prefer to join him. Accordingly a case was filed by the respondent-husband. Normally it is expected that before issuing a legal notice, the respondent-husband should have gone to the father-in-law's house to give an opportunity to the appellant-wife to join his company. In stead of that, he issued a registered notice through a lawyer to come and join his company. A registered notice is not a substitute of going personally to the father-in-law's house to invite his wife. After such registered notice was issued, it was reasonably expected for the appellant-wife to give reply. Had the respondent gone to the appellant's house in person, the situation could have been different, but the registered notice must have caused hurt to her ego. After such proceeding was initiated, the appellant-wife did not find any other way than to file an application for maintenance from the respondent-husband Under Section 125 of the Code of Criminal Procedure. But it is not known why the learned Judge, Family Court rejected the prayer to grant any maintenance to the appellant-wife, but granted maintenance to the female child at the rate of Rs. 400/- per month.

6. After such decree of restitution of conjugal rights was passed without waiting for the notice of the appeal, the respondent-husband rushed again to the learned Judge, Family Court with an application for divorce Under Section 13(1) of the

Hindu Marriage Act. But, however, the said proceeding was stayed by an interim order of this Court. During the pendency of the appeal, several opportunities were given to both parties to iron out their differences. They also appeared in our Chambers. But even after a great amount of persuasion to both parties, the respondent-husband declined to take the appellant-wife to his house although the appellant agreed to join him. The appellant is residing in her parent's house with the female child. The respondent-husband has been directed to pay Rs. 400/- for the maintenance of the female child. Even if we allow the appeal and dismiss the application for restitution of conjugal rights in no case the husband will take the appellant to his house. Therefore, in this background the only thing to be considered is as to what appropriate order that could be passed. We do not find any fault with the appellant-wife for not joining the respondent since this Court has made all attempts to ask the appellant to join the company of the respondent to which she had agreed, but the husband-respondent declined to take her. Therefore, the only solution that can resolve that dispute is to grant a decree of judicial separation. Although it is painful to grant such a decree, but from the facts and circumstances this Court is constrained to pass such a decree. The appellant-wife has no other mean to maintain herself except depending on the income of her husband. Admittedly the respondent-husband is working as a Constable in Central Industrial Security Force. Taking into consideration the salary certificate produced by the respondent, also the social status and income of the respondent, we determine the maintenance payable to the appellant and the female child at the rate of Rs. 1, 500/- per month from the month of September, 2002. It is open to the appellant-wife to approach the learned Judge, Family Court for enhancement of the maintenance in future depending upon the price index.

7. With the above direction/observation, the appeal and the revision are disposed of by granting a decree of judicial separation in favour of the respondent and further, we direct him to pay maintenance at the rate of Rs. 1, 500/- per month from the month of September, 2002 to the appellant which shall be payable by the 10th of every succeeding month in share of Bank Draft in favour of the appellant. In case the respondent defaulted in sending the Bank draft for a consecutive period of two months, it is open to the appellant to approach the employer of the respondent to deduct the said amount from his salary and remit the same to the

appellant. If such an application is made the employer will also consider the same sympathetically.

P.K. Misra, J.

8. I agree.

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