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Court : Punjab and Haryana

Decided On : Feb-27-1998

Reported in : II(1998)DMC600

Judge : K.K. Srivastava, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 482; [Hindu Marriage Act, 1955](#) - Sections 9

Appeal No. : Criminal Misc. No. 1658-M of 1995

Appellant : Shanti Devi

Respondent : Ranbir

Advocate for Def. : Adarsh Jain, Adv.

Advocate for Pet/Ap. : Daya Chaudhary, Adv.

Disposition : Petition allowed

Judgement :

K.K. Srivastava, J.

1. This is a petition filed under Section 482, Cr.P.C. seeking the quashing of orders passed by the Sub Divisional Judicial Magistrate, Palwal and the Additional Sessions Judge, Faridabad (copies of which are Annexures P1 and P2

respectively).

2. The petitioner/Smt. Shanti Devi wife of Ranbir, resident of Banchari, Tehsil Palwal, District Faridabad, filed an application under Section 125, Cr.P.C. seeking grant of maintenance for herself and for her minor daughter. She had alleged, inter alia, that she was married with the respondent about 17 years prior to the filing of the petition for maintenance, which was instituted on 1.6.1989. The marriage was duly consummated and a daughter named Shashi Bala was born out of the wedlock, who was aged about six years at the time of presentation of the petition for maintenance. The petitioner alleged that mal-treatment was meted out to her at the hands of the respondent/husband and his parents, who were demanding a cash amount of Rs. 50,000/- from the petitioner's parents besides one she-buffalow. Earlier on they had demanded one goat and one bicycle from father of the petitioner named Bhup Singh. Since Bhup Singh was unable to fulfil their demands, the petitioner alongwith her daughter was turned out of the matrimonial home about three months prior to the filing of the application under Section 125, Cr. P.C. and since then she was residing with her father. The petitioner was illiterate and had no source of income of her own. The respondent and his father were having 12 killas of land apart from which the respondent was doing business in milk vending and earning about Rs. 3,000/- per month. The petitioner also alleged that her younger sister Dayawanti was married with the brother, named Bachhu, of the respondent and Dayawanti had been tortured and she died about 10 years prior to the filing of the said petition. Under these circumstances, the petitioner apprehended danger to her life. She alleged that she had been deserted by her husband, the respondent.

3. Notice was served upon the respondent, who appeared before the Sub Divisional Judicial Magistrate and filed written reply, alleging, inter alia, that the averments made in the petition were contrary to the facts of the case. He alleged that the petitioner had taken away a sum of Rs. 10,000/- and ornaments while leaving house of the respondent. This petition, it was alleged, had been filed just to evade the demand of the aforesaid amount and the ornaments, which had been given to her by the respondent's family. It was, however, not disputed that Shashi Bala was born to the petitioner from their wed-lock. The respondent categorically

denied the averments of harassment and torture to the petitioner. Regarding the death of sister of the petitioner, it was contended that she died due to long illness and not on account of any atrocities committed by the respondent's family on her. It was further alleged that the petitioner knew stitching and sewing work and was earning Rs. 1,000/- per month from it and had thus, sufficient means to maintain herself and her daughter. The respondent alleged that he himself was an illiterate person, unable to do any government job and he did not possess any agricultural land. He was only doing milk-vending business and was unable to maintain his wife and daughter. He however made an offer to take the petitioner and her daughter to his house, and keep them with him.

4. The petitioner led evidence wherein she examined herself as PW 1, her father-Bhup Singh as PW 2, Vijay Pal as PW 3 and Dharambir as PW 4.

5. To controvert the case of the petitioner, the respondent himself appeared as RW 1 and produced Raghbir Singh as RW 2.

6. The learned Sub Divisional Judicial Magistrate after appraising the evidence led by the parties held that the respondent/husband had filed an application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, which was allowed by judgment (copy Annexure R-I) dated 2.4.1991, but the petitioner/ wife did not comply with the said judgment as she did not join the company of her husband. The learned Magistrate relied on a judgment of this Court in case Joginder Singh v. Dalbir Kaur, 1980 PLR 665, wherein it had been held that when a Civil Court decided in favour of the husband for restitution of conjugal rights holding the wife guilty for withdrawal from the society of the husband, the defaulting wife cannot invoke the maintenance provisions for seeking maintenance under the Code of Criminal Procedure. Resultantly the petition under Section 125, Cr. P.C. was dismissed.

7. The petitioner filed revision in the Court of Sessions Judge, Faridabad, which was entrusted to Shri S.K. Kapoor, Additional Sessions Judge, who after hearing the parties found no merit in the revision petition and dismissed the same. The Revisional Court endorsed the finding recorded by the learned Magistrate that the petitioner/wife had chosen to live separately despite decree of the Court. He also

held that the respondent/husband was ready to keep the petitioner in pursuance of the decree.

8. The petitioner/wife has now filed this petition under Section 482, Cr.P.C. seeking quashing of the aforesaid orders and for grant of maintenance for herself and her daughter.

9. Notice was issued to the respondent, who filed written reply, wherein the stand taken is that once the petitioner had availed the remedy of revision against the order of the learned Magistrate before the Sessions Court, she cannot in the garb of a petition under Section 482, Cr. P.C. avail the remedy of a second revision as the same is categorically barred under the provisions of the Code of Criminal Procedure. Apart from it, it has been reiterated that there is no neglect or refusal on his part to maintain the petitioner, who has herself refused to live with him. It was further alleged that the petitioner was under the influence of her parents and she had withdrawn from the society of the respondent without any lawful excuse. The petition filed under Section 9 of the Hindu Marriage Act was not even contested by the wife and it had been decreed ex-parte on 2.4.1991 (copies of order and decree Annexures R1 and R2). The respondent contended that since the petitioner did not comply with the decree for restitution of conjugal rights she was not entitled to claim maintenance.

10. I have heard the learned Counsel for the petitioner and the respondent and have carefully perused the record of the case.

11. Learned Counsel for the petitioner while seeking reversal of the impugned orders passed by the Courts below, urged that both the Courts below have travelled on surmises and conjectures and had wrongly recorded the finding that the petitioner refused to live with the respondent/husband. She contended that the evidence on the record showed that the father of the petitioner alongwith respectable members of the panchayat had gone to the house of the respondent in order to settle the matter, but the respondent refused to accept the request of the father of the petitioner and even went to the extent to man handling him. Learned Counsel for the petitioner placed reliance on a Division Bench judgment of this Court in case Ravi Kumar v. Santosh Kumari, 1997 (3) RCR 3, wherein it

was held that the wife against whom the decree of restitution of conjugal rights has been passed would not be entitled to claim allowance under Section 125 of the Code of Criminal Procedure if in the proceedings of restitution of conjugal rights a specific issue has been framed on the point, 'as to whether without any sufficient reason, wife refused to live with the husband' and the parties have been given an opportunity to lead evidence and thereafter a specific finding is recorded by the Civil Court. It was held that in case the husband has got an ex-parte decree of restitution of conjugal rights from the Civil Court, it shall not be binding on the Criminal Court in exercise of its jurisdiction under Section 125, Cr. P.C. It was held further that in case decree for conjugal rights is obtained by the husband subsequent to the order for maintenance passed by the Magistrate under Section 125, Cr. P.C, then the decree ipso-facto would not end the right of maintenance and in that case husband will have to approach the Court of Magistrate under Sub-section (5) of Section 125 of the Code of Criminal Procedure for cancelling the order granting maintenance under Section 125, Cr. P.C. In the facts of the case in Ravi Kumar's case (supra), the wife/Santosh Kumari had filed an application under Section 125, Cr. P.C. against her husband in the Court of Sub Divisional Judicial Magistrate, Pathankot, who had dismissed the application vide his order dated 12.7.1990, holding that the wife had failed to prove any sufficient reasons to reside separately from her husband and as such, she was not entitled to claim maintenance in view of the provisions of Section 125(4) of the Code of Criminal Procedure. A revision Petition filed before the Sessions Court was pending when the husband's petition filed under Section 9 of the Hindu Marriage Act was allowed by the Additional District Judge vide judgment dated 17.8.1990. The Additional District Judge, however, allowed the revision and set aside the order of the Sub Divisional Judicial Magistrate after recording a finding that the wife had left her matrimonial home due to mal-treatment meted out to her by the respondent/husband and she had not left the company of the husband without any reasonable cause. The finding on that fact was, thus, reversed by the Revisional Court, which allowed the maintenance to the wife at the rate of Rs. 400/- per month from the date of the order of the Trial Court. A petition filed under Section 482, Cr. P.C. was pending before a Single Judge of this Court, who found that there was conflict of authorities on the point as to whether the wife against whom

the decree of restitution of conjugal rights has been passed, is entitled to claim maintenance under Section 125, Cr. P.C. ?' The learned Single Judge, thus, directed the matter to be placed before the Hon'ble Chief Justice for constituting a larger Bench for deciding the point. The case was, thus, listed before a Division Bench, as aforesaid.

12. In the instant case, the Additional District Judge, Faridabad, decreed the petition under Section 9 of the Hindu Marriage Act, filed by the respondent/ husband, vide his judgment dated 2.4.1991 (copy Annexure R1). This judgment was ex-parte. The learned Additional District Judge has mentioned in the last line of his judgment, '.....the decree shall be ex-parte'. The learned Magistrate dismissed the petition for maintenance much later than the ex-parte decree in the petition under Section 9 of the Hindu Marriage Act was passed inasmuch as the judgment of the learned Magistrate is dated 28.1.1994. The facts of the instant case are, thus, slightly different from the facts of the case of Ravi Kumar (supra) decided on 22.4.1997. However, it may be mentioned that the Division Bench in the aforesaid case of Ravi Kumar had categorically held that the maintainability of a petition under Section 125, Cr. P.C. after the decree of the petition under Section 9 of the Hindu Marriage Act will depend upon the following circumstances, i.e. :

'The wife against whom a decree of conjugal rights has been passed, would not be entitled to claim allowance under Section 125, Cr. P.C. if in the proceedings of the restitution of conjugal rights, a specific issue has been framed on the point as to whether without any sufficient reason, the wife refused to live with the husband' and the parties have been given an opportunity to lead evidence and where after specific findings are recorded by the Civil Court. In case the husband has got an ex-parte decree of conjugal rights, it shall not be binding on the Criminal Court in exercise of its jurisdiction under Section 125, Cr.P.C.'

13. In the instant case, the decree passed under Section 9 of the Hindu Marriage Act was ex-parte. It is, thus, abundantly clear that there was no issue framed at the trial of the petition under Section 9 of the Hindu Marriage Act 'as to whether the wife deserted the company of the husband without any lawful excuse'. Since the wife/petitioner was proceeded ex-parte, there was no question of granting any

opportunity of leading evidence to the wife. I am in respectful agreement with the law laid down by the Division Bench of this Court in Ravi Kumar's case (supra) and following the same, I hold that in the instant case both the Courts below have wrongly held that the petition under Section 125, Cr.P.C. to be not maintainable in view of the decree passed by the Additional District Judge for restitution of conjugal rights against the petitioner/wife under Section 9 of the Hindu Marriage Act and regarding the wife not complying with the said decree.

14. So far as the objection taken by the respondent/husband regarding the maintainability of the petition under Section 482, Cr .P.C is concerned, the same has no merit inasmuch as it is the settled law that the High Court can in a given case examine the legality of the impugned orders passed by the Revisional Court as also the Trial Court in exercise of the inherent powers. It may further be pointed out that both the Courts below have rejected the claim of maintenance of the petitioner/ wife, but they have not considered the case of the minor daughter of the parties, who is residing with her mother, the petitioner. The case of the minor daughter for maintenance stands on an entirely different footing than that of the petitioner/ wife. The Courts below were, therefore, in error in not considering the case of grant of maintenance to the minor daughter. The Courts below have wrongly rejected the claim for maintenance of the petitioner/wife on the ground of the ex-parte decree of restitution of conjugal rights, having been passed against the wife and her refusal to comply with the same.

15. Resultantly, this petition has considerable merit and is allowed. The impugned orders (Annexures P1 and P2) passed by the Courts below are set aside and the application under Section 125, Cr. P.C. moved by the petitioner for maintenance for herself and her minor daughter a sent back to the Court of Sub Divisional Judicial Magistrate, Palwal, for disposal in accordance with law. The learned Magistrate is directed to decide the petition on merits, after affording a reasonable opportunity of hearing to the parties and the same be decided expeditiously and preferably within a period of four months from the date of receipt of copy of this order.