

Santosh Vs. Pal Singh

Santosh Vs. Pal Singh

SooperKanoon Citation : sooperkanoon.com/631788

Court : Punjab and Haryana

Decided On : Dec-02-1993

Reported in : (1994)106PLR638

Judge : S.S. Grewal, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 125, 125(1), 125(3), 125(4), 397 and 401

Appeal No. : Criminal Revision No. 786 of 1991

Appellant : Santosh

Respondent : Pal Singh

Advocate for Def. : Vinay Mittal, Adv.

Advocate for Pet/Ap. : Kiran Bala Jain, Adv.

Disposition : Petition allowed

Judgement :

S.S. Grewal, J.

1. This petition is directed against the order of Additional Sessions Judge, Karnal, dated 5th August, 1991, whereby the order of the Judicial Magistrate 1st Class, Karnal, dated 15.3.1991 granting Rs. 300/- per month as maintenance allowance

to the petitioner-wife from the date of the said application was set aside.

2. Briefly stated the facts of the case are that Smt. Santosh moved petition under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) for grant of maintenance allowance from her husband Pal Singh on the averments that after solemnisation of the marriage they lived together as husband and wife at village Goli. No child was born out of the said wedlock. She was treated with cruelty by her husband and was even denied basic necessities of life like food and clothing. She was called as Banjh, and was turned out the house in bare clothes on 27.11.1981. Her husband Sled petition under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as the Act) on 27.6.1982. In those proceedings parties compromised and the petitioner lived with her husband after 11.9.1982 for a period of one year. During this period her husband maltreated her and ultimately turned her out of his house on 11.8.1983. The respondent threatened her that she will not keep her as his wife and the petitioner is now, living with her father. It was also pleaded that her husband Pal Singh had contracted a second marriage with one Sunita. It was further pleaded that her husband is posted as Clerk in Canal Department at Kaithal and gets Rs. 1500/- as his salary whereas petitioner-wife is an illiterate lady and has no source of income to maintain herself.

3. The respondent-husband in his reply admitted the factum of his marriage with the petitioner. According to him, after their marriage they led marital life till 27.11.1982 when his petitioner-wife left her matrimonial home in his absence. She did not return and the respondent was compelled to file application under Section 9 of the Act against her. The petitioner-wife agreed to live with the respondent-husband on the intervention of the Court. Thereafter both the parties lived peacefully from 11.9.1982 for a period of one year and that the petitioner-wife had herself left the matrimonial home without any reasonable cause. It was next pleaded that village Panchayat was convened on 9.6.1983 and an agreement was executed to the effect that the petitioner-wife wants dissolution of marriage and that nothing remained due to her. On the same day i.e. on 9.6.1983 she went along with her father without any sufficient cause. Allegations of cruelty were denied and it was maintained that the husband never neglected or refused to

maintain her. Rather it was pleaded that the wife herself had withdrawn from the Company of the respondent-husband without any sufficient cause. The respondent pleaded that he is getting salary of Rs. 700/- per month out of which he has to support his aged old parents. It was further pleaded that he made efforts so that the petitioner-wife may come back to her matrimonial home but in vain and that petition under Section 125 of the Code is false and frivolous and was liable to be dismissed.

4. The learned counsel for the parties were heard.

5. On behalf of the petitioner-wife, it was contended that there is no legal, cogent or reliable evidence on the record that the parties were living separately by mutual consent. There is considerable merit in the contention raised by the learned counsel for the petitioner-wife. The learned Additional Sessions Judge, has mainly relied upon the writing Ex. R.I dated 9.6.1983 to hold that the parties were living separately by mutual consent. Maha Singh RW.2 is the scribe, Pal Singh respondent appeared as RW.4 and Jyoti Ram appeared as RW.5. According to all these witnesses the agreement Ex.R.I had been executed by the father of the petitioner, who had also mentioned that nothing was due between them and Pal Singh (respondent). It is also significant to note that there is no specific mention that the petitioner-wife had agreed not to claim any maintenance from her husband or had in any manner relinquished her right in this regard. Mere fact that the petitioner had expressed desire to get divorce from her husband or execution of agreement Ex.R.I would not in any manner jeopardise statutory right of the petitioner-wife to get maintenance from her husband. Nor legal right to obtain maintenance can be relinquished, bartered, done away with or negated by execution of an agreement like Ex. R.I which being against the public policy is per se illegal, and has no value in the eyes of law. I find support in my view from Division Bench authority of this Court in *Ranjit Kaur v. Pavittar Singh*, (1991-2)100 P.L.R. 421 = (1991)18 Cr. L.T. 437 (D.B.).

6. Faced with this situation, it was submitted that the respondent-husband is ready and willing to maintain his wife, who has refused to live with him without any just ground and that the husband earlier on had to file proceedings under Section 9 of

the Hindu Marriage Act, for restitution of conjugal rights and thereafter the petitioner-wife lived with the respondent-husband for about a year or so and withdrew from his company without any sufficient cause. The argument is devoid of any merit. It is true that after the respondent-husband obtained decree for restitution of conjugal rights the parties lived together as husband and wife for about a year or so. During this period the husband mal-treated his wife by taunting her that she could not bear any child and addressed her as Banjh. The husband also gave her beating and turned her out of his house in the year 1983. The other reason given by the wife is that the respondent-husband had married another woman namely Sunita and a child had been born out of the said wed-lock. About the second marriage the petitioner-wife also complained to the authorities under whom the respondent-husband is employed. The wife has thus given just and sufficient explanation for not living with her husband. There is no material evidence on the record that the husband had paid any maintenance to his wife for the period after she was compelled to leave her matrimonial home because of mal-treatment and cruelty meted out by her at the hands of her husband and before she filed the application for grant of maintenance and thereby neglected to maintain his wife. In the instant case, the learned Additional Sessions Judge has gravely erred in ignoring the provisions of second proviso and explanation to Sub-Section (3) of Section 125 of the Code and instead dealt with the case mainly under Section 125 (1) and (4) of the Code.

7. For the foregoing reasons, the impugned order passed by the learned Additional Sessions Judge, dated 5.8.1991 cannot be legally sustained. The same is hereby set aside and the order passed by the trial Magistrate granting maintenance to the petitioner dated 15.3.1991 is restored. This petition is accordingly allowed.