

Krishna Kumari Vs. the State

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Court : Delhi

Decided On : Jan-08-1968

Reported in : ILR1968Delhi237

Judge : I.D. Dua, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 488

Appeal No. : Criminal Revision Appeal No. 9 of 1967

Appellant : Krishna Kumari

Respondent : The State

Advocate for Pet/Ap. : P.S. Safeer and; M.B. Lal, Advs

Judgement :

(1) This revision petition is directed against the order of Shri H. L. Sikka, S. D. M. New Delhi dated 28/5/1966, dismissing the petition filed by the petitioner u/s 488 Criminal Procedure Code .

THE facts of this case are as follows :

THE parties to this petition were married on 17/11/1959, at New Delhi. After the marriage the parties lived together as husband and wife and a son was born to the petitioner on 20/10/1960. The allegation of the petitioner is that the respondent and his mother were not satisfied with the dowry brought by the petitioner and

accordingly the respondent started mal-treating the petitioner. The petitioner alleged that on a number of occasions the respondent gave her beating. The petitioner alleged that in July, 1962, the respondent gave her severe beating and confined her in a room and she was rescued by Gopal Das, brother of the respondent. The petitioner stated that the respondent gave her beating and turned her out of the house and since then she was living with her parents in Rajasthan. The petitioner stated that in August, 1963, the respondent brought a petition for divorce against her on the ground that she was living in adultery with her brother-in-law. The petitioner alleged that this petition was tried by Shri C. G. Suri, Additional District Judge and it was dismissed on 16/10/1964. The petitioner claimed a sum of Rs. 10.00 as maintenance.

(2) The respondent resisted the petition filed by the petitioner. The respondent denied to have mal-treated the petitioner or to have beaten her. The respondent alleged that the petitioner was living in adultery with her sister's husband. The respondent admitted that his petition for divorce had been dismissed but stated that he had filed an appeal in the High Court which was pending. The respondent maintained that the petitioner was not entitled to any maintenance. The petitioner in support of her case, besides examining herself, examined P.W. 2, Phool Chand. The respondent in support of his case, besides examining himself, examined DW. 1 Methoo Lal Dhobi, DW. 2 Hardevi (mother), DW. 3 Amar Chand, shopkeeper.

(3) The respondent was given notice of this petition but he has not chosen to put in appearance. After hearing the learned counsel of the petitioner and on going through the record, I am of the view that the respondent has neglected to maintain the petitioner and that the finding of the Magistrate that the petitioner was living in adultery with her brother-in-law, cannot be sustained. In the written statement, the respondent has alleged that the petitioner was living in adultery with her sister's husband. The respondent has not given any particular adultery committed by the petitioner. DW. 1. Methoo Lal Dhobi stated that the parties quarrelled as respondent wanted that the petitioner should not visit Murli. The witness stated that no quarrel took place between the parties over dowry. The witness further stated that his brother saw the petitioner visiting Murli in subzimandi a number of times. In my view the evidence of DW. 1 does not establish that the petitioner was

living in adultery with Murli. The evidence of this witness appears to be interested. DW. 2 Hardevi, mother of the respondent stated that once in the afternoon she had seen petitioner and Murli lying on a cot and they were embracing each other. In cross-examination, the witness stated that she did not remember the date or the month when she saw them in a compromising position. She further stated that she did not inform her son of what she had seen. It is impossible to believe that Murli would have gone to the house of the respondent and in day time, he would have tried to misbehave with the wife of the respondent in the manner alleged by DW. 2. It is further not possible to believe that DW. 2 would not have informed her son of what she had seen, if that was true. DW. 4 Sunder Dasn stated that in the beginning, the petitioner suggested to him different poses for sexual intercourse and this created suspicion in his mind. According to the respondent on one afternoon, he went to the house of Murli and he saw his wife with Murli on one cot. According to the respondent his relations with the petitioner got strained as he wanted the petitioner not to visit Murli but she insisted on meeting Murli.

THE respondent further stated that once he had gone to Gwalior on some course and on his return to Delhi, he was informed that the petitioner had tried to commit adultery with his nephew Mohan. The respondent admitted in cross-examination that Mohan was only 14 years of age. DW. 3 Amar Chand stated that the dispute between the parties was that the respondent wanted his wife not to visit Murli but she insisted on meeting him.

(4) After going through the evidence of the respondent I have no hesitation in finding that the respondent has chosen to make false allegations of adultery against his wife. In the written statement, the respondent made no allegation that the petitioner had tried to commit adultery with Mohan, nephew of the respondent. In cross-examination of the petitioner a suggestion was put to her that she had tried to commit intercourse with Mohan and that the mother and sister of the respondent had caught the petitioner and Mohan in compromising position. Hardevi mother of the respondent did not state that she had caught the petitioner and Mohan in a compromising position. This allegation of the respondent is falsified from the fact that Mohan is only aged 14 years. The respondent did not examine his sister who is alleged to have seen the petitioner and Mohan in

compromising position. The allegation of the respondent that the petitioner was carrying on with her brother-in law, also appears to be devoid of truth. In the petition for divorce, the respondent had made this allegation of adultery against his wife and Shri C. G. Suri, Addl. District Judge found the allegation to be false. The respondent went up in appeal to the High Court against the order of Shri Suri. I am informed at the bar that E.A.O.M. 29/D of 1965, Sunder Das v. Krishna Kumari etc. came up for consideration before Hon'ble Mr. Justice Bedi on 4/10/1966, and His lordship has dismissed the appeal. I would accordingly find that the allegations of the respondent that the petitioner was living in adultery with her brother-in-law has not been substantiated. Making a false allegation of adultery against the wife would amount to cruelty. I would find that the respondent has neglected to maintain his wife.

(5) The respondent in his written statement admitted that he was in receipt of monthly emoluments of Rs. 221-50 Paise. In my view the petitioner should be awarded a maintenance of Rs. 60.00 per month from the date of the application made by her. I would accordingly make recommendation to the Hon'ble High Court that the revision petition should be allowed and the order of the learned Magistrate should be quashed and the petitioner should be allowed maintenance of Rs. 60.00 per month from the date of the application.

I.D. Dua, C.J.

(6) The learned Additional Sessions Judge, Delhi, had made this reference recommending that the order of the learned Magistrate dated 28/5/1966 dismissing Smt. Krishna Kumari's application under section 488, Criminal Procedure Code, be reversed and maintenance be allowed to her at the rate of Rs. 60.00 per month from the date of the application. It is unfortunate that revision of this nature should have been kept pending in this Court for more than a year. Cases of maintenance under section 488, Criminal Procedure Code, which are dealt with summarily for compelling a man to maintain his wife or children, deserve priority and they must be set down for hearing with dispatch and an attempt should be made, so far as possible, to see that they are disposed of within a period of six months, for, undue delay in such cases must tend to defeat the very purpose of

such summary proceedings.

(7) The parties were married in November, 1959 and a son was born from this wedlock on 20/10/1960. That son is living with the husband, The wife approached the Court of the Sub-Divisional Magistrate with allegations of cruelty by her husband and her In-laws on the ground that she had not brought enough of dowry. Smt. Krishna Kumari was not even allowed to see her son or to attend on him. Allegations of beatings given to her on several occasions were also made in the application. When she was turned out in July, 1962 and confined in a room, she was rescued by Shri Gopal Dass, brother of the respondent and thereafter she was forced to leave the house because she felt that her life was in danger. After staying for about a month with her sister, who is married in Delhi, Smt. Krishna Kumari moved to the house of her parents in Rajasthan where she is staying since then. So that her husband Sunder Dass may be able to remarry and obtain higher dowry, he filed a petition for divorce in August, 1963 falsely alleging adultery on the part of Smt. Krishna Kumari with her own brother-in-law. Shri C. G. Suri, Additional District Judge, dismissed those proceedings on 16/10/1964. The husband's income was stated to be about Rs. 350.00 per month because in addition to Government service, he was also doing some other part time work. The wife, according to the averments had incurred expenses amounting to about Rs. 1,000.00 in defending the divorce proceedings, but she was allowed only a sum of Rs. 500.00 by way of costs. Her stridhan in the form of ornaments, jewellery and cloth valued at about Rs. 2,500.00 was also alleged to have been taken away by the husband at the time she was forced to leave the matrimonial house. It was expressly stated that since July, 1962, she had not been given any maintenance. It was prayed that maintenance be granted to her at the rate of Rs. 100.00 per month with effect from July, 1962. This application was apparently presented sometime in December, 1964.

(8) This application was contested by the husband who admitted the birth of a son from this wedlock. The allegation of beating was denied and it was pleaded that Smt. Krishna Kumari had deserted the child for an ulterior motive of living without any child with her. It was also averred that Smt. Krishna Kumari was living with her sister's husband and living an adulterous life with him. It was admitted that the

petition for divorce had been filed against the wife, but it was added that this was done on the ground of adultery on the part of Smt. Krishna Kumari with her sister's husband. It was conceded that those proceedings failed at that time and appeal against the order dismissing Shri Sunder Dass's suit for divorce was pending and the matter was thus described to be sub judice. In regard to his income, it was admitted that he was getting Rs. 221-50 including allowances. The allegation of the husband doing part time work outside Government service was denied as it was described to be contrary to Government rules. The wife was stated not to be entitled to any maintenance because she was leading an adulterous life with her sister's husband, It may be pointed out that in this application, at the bottom, though there was a typed verification clause, the same was scored out presumably before it was filed in Court.

(9) The learned Sub-Divisional Magistrate trying these proceedings seems to me to have approached the consideration of the case from a wholly erroneous point of view. It appears that the learned Magistrate expected the witnesses to give exact date, month and year of the alleged beating given by the husband to the wife when they deposed in Court. The learned Magistrate presumably thought as if these factors have to be established in accordance with the test applicable to criminal cases that the guilt of an accused person is to be established beyond the possibility of a reasonable doubt. This approach, in my opinion, is far from correct in proceedings under section 488, Criminal Procedure Code . To discredit the petitioner's evidence on the ground that appropriate corroboration is not forthcoming is an infirmity in the order of the learned Magistrate which must inevitably require the Court of revision to go into the evidence itself. Although the learned Magistrate has at one place in his order observed that the statement of the wife cannot be believed on the question of beatings given to her, at another, he has stated, believing the statement of the husband, that he had a strong suspicion about Smt. Krishna Kumari's character and that there was also a quarrel between them on this account. Now, when such was the feeling between the parties and has been so held by the learned Magistrate, I do not understand how it could not be considered to be highly probable that beatings were given by the husband to the wife as alleged. To expect disinterested corroborative evidence on the question of beating on this premise is, in my view, to take almost a per se view

of things. Keeping in view the conditions prevailing in our society particularly in the class from which the parties come, on the facts and circumstances found by the learned Magistrate, it was highly probable that the husband actually did give beatings to the wife as alleged. To expect disinterested meticulously precise evidence from the neighbours as to the point of date, month and year was, in my view to take almost a perverse view of the situation. The learned Magistrate, when referring to the statement of the husband in Court, made the following observations which would show the attitude of mind of the husband :-

'ACCORDING to him (the husband) Murii Dhar took the petitioner with him. After 10 or 15 days, he (the respondent) contacted Murii Dhar and requested him that petitioner should be sent back. The respondent says that Murii Dhar flatly refused to send the petitioner to him and told him that he might resort to litigation if he had to get back his wife. After a short while Murii Dhar sent the petitioner to her parents from where he and his younger brother Lakshman brought her back. After a period of 4-5 months, a child was born out of this wedlock. The petitioner again started visiting Murli Dhar on which there was again a quarrel between them.'

(10) On this premise, to place implicit reliance on Sunder Dass's statement denying to have ever beaten his wife, because there is no independent corroboration, is to take almost a perverse view of things.

(11) The learned Magistrate has come to the conclusion that the wife was leading an adulterous life with Murli Dhar. He seems to have placed reliance on the testimony of the husband when he says that on one occasion he went to Murii Dhar's house and found his wife lying in a compromising position with Murii Dhar on a charpai. To place implicit reliance on this kind of a statement is, in my view, the height of perversity, for it is most unlikely that the wife's sister would allow this kind of open objectionable behavior in her own house with her husband on the part of her sister and to believe that Sunder Dass was allowed free access to the house, when he alleges that his wife and Murli Dhar were in a compromising position, adds to the perversity of the approach and the conclusion. The learned Magistrate has in the concluding part of his order relied in support of the plea of adultery on the evidence of the husband and his mother and the evidence of the

two neighbours who had stated that there was a quarrel between the husband and the wife on account of the fact that the husband was asking his wife not to visit the house of Murli Dhar. This, according to the learned Magistrate, is sufficient to establish that the petitioner was living in adultery with Murli Dhar. On this premise, the wife's application was dismissed under section 488(4), Criminal Procedure Code.

(12) The learned Additional Sessions Judge has gone into the matter with great care and has rightly held that the testimony of Methoo Lal Dhobi D.W. 1, of the husband's mother Hardevi as D.W. 2 and of the husband Sunder Dass as D.W. 4 is untrustworthy so far as the allegation of adultery is concerned. As a matter of fact, in the evidence, another instance of adultery with the husband's nephew Mohan, a 14 year old boy, was also sought to be proved. This circumstance, in my view, quite clearly suggests that in order to give a bad name to his wife and to discredit her, the husband and his mother were willing to go to almost any length for manufacturing imaginary allegations of adultery on her part. The learned Additional Sessions Judge has further taken notice of the fact that an appeal presented by the husband in the Punjab High Court against the order of the learned Additional District Judge dismissing his suit for divorce was dismissed by Bedi J. on 4/10/1966. It is broadly on this basis that the present recommendation has been made to this Court and the amount of Rs. 60.00 per month has been fixed in view of the husband's admission that his monthly emoluments amount to Rs. 221-60 Paise.

(13) Before me, the learned counsel for the respondent has almost exclusively confined his defense to the submission that on revision, even in proceedings under section 488, Criminal Procedure Code, this Court has no jurisdiction to reconsider a conclusion on a question of fact however grossly erroneous that conclusion may be. In support of this submission, he has relied on *Badrudin v. Staler*), *Fakir Chand v. Madan Mondal*(2), *Dulari v. Mt. Sundaria*(3), and *Edama v. Hussainappa*(4).

(14) The petitioner Smt. Krishna Kumari was not represented by any counsel in this Court. Shri Pritam Singh Safeer, a senior Advocate of this Court, however,

offered to help this Court as amicus curiae, As Smt. Krishna Kumari had to come from Rajasthan where she is staying with her parents, Shri Safeer was good enough to prepare the case and has argued the case after lunch. Shri Safeer has submitted that section 439, Code of Criminal Procedure, under which this Court exercises its power of revision, empowers this Court in its discretion to exercise any of the powers conferred on a Court of Appeal by sections 423, 426, 427 and 428 or on a Court by section 388 of the Code of Criminal Procedure and this power, according to the learned counsel, is not to be narrowly construed, if the cause of justice so demands. He has placed reliance on *Khaija Waipahi v. Ngulthang*(5) Air 1963 and has submitted that the case of *Garasia Jorubha v. Stater*(110), also suggested that any perverse or manifestly wrong decision can be interfered with on revision. In regard to the merits, he has submitted that the decision in *Sunder Doss v. Smt. Krishna Kumari*, F.A.O. (N) 29-D of 1965 decided by Bedi J. on 4/10/1966 is binding on the parties and that decision having been given after the order of the learned Magistrate, the learned Additional Sessions Judge was fully competent to take that decision into account and come to his own conclusion on the basis of that judgment. This contention has been sought to be met on behalf of Shri Sunder Dass by submitting that the said appeal had been dismissed for non-prosecution on 11/11/1965 because Sunder Dass had failed to deposit the process- fee in time for service on Krishna Kumari. I find from the final judgment in that case that Sunder Dass had later filed an application for restoration of the appeal, but that application for restoration was dismissed.

(15) In so far as the evidence is concerned, the learned counsel for Sunder Dass has not cared to take me through the evidence for the purpose of controverting the conclusion of the learned Additional Sessions Judge.

(16) The revisional power of the High Court is discernible from section 435 of the Code of Criminal Procedure which reads as under :-

'435.(1) The High Court or any Sessions Judge or District Magistrate, or any Sub-Divisional Magistrate empowered by the State Government in this behalf, may call for and examine the record of any proceedings before any inferior Criminal Court situated within the local limits of its or his jurisdiction for the purpose of satisfying

itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and may, when calling for such record, direct that the execution of any sentence or order be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record. Explanationn : All Magistrates, whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 437.

(2) If any sub-Divisional Magistrate acting under subsection (1) considers that any such finding sentence or order is illegal or improper or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

** * * *

(4) If an application under this section has been made either to the Sessions Judge or District Magistrate, no further application shall be entertained by the toher of them.'

(17) The power, thereforee, as given by the statute is widely worded. Section 438 of the Code, on which Shri Mohan Behari Lal has principally relied, merely lays down that the Sessions Judge or the District Magistrate may, if he thinks fit on examining under section 435 or toherwise the record of any proceeding, report for the orders of the High Court the result of such examination and, when such report contains a recommendation that a sentence or an order be reversed or altered, may order that the execution of such sentence or order be suspended, and, if the accused is in confinement, that he be released on bail or on his own bond. In terms, this section also does nto restrict the power of this Court as conferred on it by section 435 of the Code. Turning now to section 439 of the Code, it is quite clear that on revision, the High Court, may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 423, 426, 427 and 428 or on a Court by section 338. The scheme of the Code in regard to the power of revision, as I understand it, is that the revisional Court is given a supervisory jurisdiction to secure the correction of a patent error or defect which has resulted in miscarriage

of justice, and this may arise from misconception of law or irregularity of procedure. The jurisdiction conferred on the High Court is a kind of paternal or supervisory jurisdiction from the point of view of substantial justice. It is undoubtedly true that the power of revision should not be so exercised as to convert it into a right of appeal, where such a right is excluded by the Code, but unlike sections 100 and 115 of the Code of Civil Procedure, the power of revision under the Code of Criminal Procedure is not so rigidly circumscribed, within the rule requiring clear question of law so of jurisdiction, as to exclude this Court's jurisdiction to interfere where the conclusions of the Court below are grossly erroneous and even though grave injustice may have resulted, therefrom.

(18) But in the present case the order of the learned Magistrate suffers from grave infirmities inasmuch as he has approached the consideration of the case from a wholly erroneous point of view and has not applied his mind to the standard of proof required for finding a conclusion of adultery on the part of the wife. Whereas in his approach in considering the wife's plea of cruelty, he has applied the standard of a criminal case which was far from appropriate, in dealing with the husband's plea of adultery, he has relied on evidence which is on the face of it, incredible and part of it is hearsay. In a case of this type, in my opinion, this Court would be fully competent to interfere if the justice of the case so demands. The fact that on the merits no attempt has been made by the counsel for the husband to support the conclusion of the learned Magistrate, also suggests the infirm basis on which the order of the Magistrate is founded.

(19) It is true that no copy of, the order of the Punjab High Court in divorce proceedings has been placed on the record, but it was conceded before the learned Magistrate that the trial Court had dismissed Sunder Dass's suit for divorce. If that was so, then it is one further reason why the highly unsatisfactory evidence on the point of adultery should not have been implicitly relied upon, as was wrongly done by the trial Court.

(20) For all the foregoing reasons, I accept the recommendation of the learned Additional Sessions Judge and in agreement with him direct that the husband should pay a sum of Rs. 60.00 per month from the date of the wife's application,

with which recommendation no fault has been found on behalf of the learned counsel for Sunder Dass. The- order of the learned Sub-Divisional Magistrate is thus set aside and replaced by the order which is made in agreement with the recommendation of the learned Additional Sessions Judge.

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