

Raj Kumari Vs. Dev Raj Vij

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Court : Delhi

Decided On : Jul-17-1984

Reported in : 1984(2)Crimes662; 1984(7)DRJ323; 1984RLR554

Judge : D.R. Khanna, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 127

Appeal No. : Criminal Revision Appeal No. 245 of 1983

Appellant : Raj Kumari

Respondent : Dev Raj Vij

Advocate for Pet/Ap. : C.M. Chopra and; D.R. Sethi, Advs

Judgement :

D.R. Khanna, J.

(1) Smt. Raj Kumari and Dev Raj Vij were married in the year 1950. The marriage, however, floundered, and in the year 1956 the husband applied for judicial separation. This was without success, and his final appeal -was dismissed by the High Court in 1968. There has been no child.

(2) On 18-3-1969 Smt. Raj Kumari moved a petition for grant of maintenance to her under the Code of Criminal Procedure. This was allowed at the rate of Rs.

125.00 per month by an order made by a Magistrate on 21-6-1973. The maintenance allowance was payable from the date of the petition. Both the sides assailed this order in revisions. Smt. Raj Kumari contended that the maintenance was too meagre, while the husband pleaded that the Delhi court had no territorial jurisdiction to decide the matter. This latter contention prevailed with the High Court, and as such the petition for maintenance stood rejected. Naturally in the circumstances, the propriety of enhancing the maintenance could not be then gone into. Smt. Raj Kumari, however, feeling aggrieved moved the Supreme Court, and succeeded in establishing that the court at Delhi had jurisdiction. This was on 17-2-1977. The result was that the order of maintenance stood sustained. In that eventuality Smt. Raj Kumari could have pressed before the High Court that her revision for enhancement should be decided on merits. Somehow this did not happen.

(3) The petitioner later moved a petition under Section 127 Criminal Procedure Code . before Metropolitan Magistrate on 27-8-1977 seeking enhancement of the maintenance to Rs. 500.00 per month. It was pointed out that Dev Raj Vij was Principal of the Government State Training College, Patiala, and was drawing Rs. 2,500.00 per month, and leading a luxurious life, while she was left to reside with' her parents and brother at their mercy. On this petition after contest the trial court has enhanced the maintenance to Rs. 200.00 per month. 'This has been made operative from the date of the order viz. 8-8-1983. It is in these circumstances that Smt. Raj Kumari feeling aggrieved, has now moved the present revision. The grievance made is two-fold. Firstly, it is contended that the enhancement is too nominal and entirely in commensurate with the earnings of her husband who apart from enjoying good salary was owning a car. Secondly, it is pleaded that the enhancement should have been from the date of the application. It is urged that she camp suffer or be penalised for the delay of six years which took place in the disposal of her petition for enhancement under Section 127 Criminal Procedure Code ,

(4) I have heard both the sides and given my due consideration to all the circumstances. Two certificates stand produced on record from the Principal, Government College of Education, Jalandhar, which show that the total

emoluments of the respondent in February, 1977 were Rs 1798. After deduction of Provident Fund, return of car advance, compulsory deposit and income-tax, the net amount paid to him was Rs. 1205.00 . The other certificate shows his total salary in February, 1983 as Rs. 2,936.00 . After deduction of Provident Fund, L.I.C. etc., he was getting Rs. 1981.00 net. As against that the petitioner has been living in a house owned by her brother as a matter of courtesy. She has no income of her own. For some time she was engaged as a part-time social worker with the Indian Council of Legal Aid & Advice from December, 1980 to August, 1982. She was then getting Rs. 200.00 as honorarium and this was intended to cover her out of pocket expenses in the shape of conveyance etc. while moving about in various courts at Delhi in connection with the work of the Council (vide Ex. R.W. 2/1). It is not shown that she has any other income.

(5) With this state of the respective financial position and earnings of each of the parties, it must be said that enhancement allowed by the trial court has been rather extremely low. Normally, in the absence of special circumstances, a wife should be entitled to maintenance at an amount ranging from 1/5th to 1/3rd of the husband's earnings. The fact that she has been neglected in the providing of proper maintenance is amply borne out by the grant of maintenance itself by the court. As already noted above, the husband failed to obtain a decree for judicial separation which does reasonably bring out that no matrimonial blame could be placed on the wife. She thus appears to have led a forsaken life.

(6) The honorarium of Rs. 200.00 per month which she was getting from the Council was primarily for meeting her out of pocket expenses, and could not be treated as a sort of income. In the circumstances, she should have been allowed maintenance of at least Rs. 250/- per month from 1977, and this could be raised to Rs. 350.00 from 1-1-1980, and still raised to Rs. 450.00 per month from 1-1-1982. This is in the context of the increments which the respondent has been getting in his service. As noted above, his total emoluments increased from Rs. 1798.00 in 1977 to Rs. 2936.00 in February, 1983. He, of course, will be entitled to reduction in case he has retired, but in that case the interest income that he enjoys from the provident fund and gratuity which he gets may have also to be taken into account.

(7) The next question to be determined is whether the enhancement of compensation could have been allowed from the date when the petition for enhancement was moved, or should have necessarily been deferred to the date of the order of the court. There has been a conflict of decisions of different High Courts in this regard. A perusal of Section 125 Criminal Procedure Code . shows that the court may, upon proof of neglect or refusal to maintain, order the defaulting person to make a monthly allowance at such rate not exceeding Rs.500.00 in the whole as may be thought fit and to pay the same as the court may 'from time to time' direct. Thus these provisions postulate the availability of power with the court to require the payment of maintenance as may be directed from time to time. The significance, on time factor cannot be treated as without purpose. In fact the same is pointer to variations inherent indifferent situations, and the Magistrate taking note of them. Thus independent of Section 127 which specifically, makes provisions for alternation in maintenance allowance, the basis thereof is laid in Section 125 itself and recognised there. What Section 127 elaborates is the nature of proof that the Magistrate may require. The same is the change in circumstances. Here again the upper limit of Rs. 500.00 in the whole is maintained. This Section is thus supplemental to Section 125, and even has been treated as proviso by the Mysore and Punjab & Haryana High Courts in the decision reported as Dr. T.K. Thayumanavar v. Asanambal Ammal Air 1958 Mys 190, and Bhagat Singh v. Smt. Prakash Kaur 1972 P.L.R. 952. In both these decisions the power of a Magistrate to direct that the increased rate of maintenance be paid from the date of the application asking for the increase was upheld. It was, of course, observed that ordinarily an order of this type should be effective only from the date of the order, and that before the same was given retrospective effect, there must be special circumstances. The mere fact that there was some delay in the enquiry of the case, it was observed, would not be a sufficient ground to direct the payment of increased rate maintenance from the date of the application.

(8) The Kerala High Court has as well in Parameswars Mother v. Balameenakshi, : AIR1969 Ker108 recognised the power of the Magistrate to award enhanced maintenance from the date of the application. It was noted that there was a distinction between an order reducing the maintenance allowance and an order

increasing the allowance. In the former case, the principle that amounts already accrued could not retrospectively varied, had to be applied. In the other case, i.e. of an enhancement of allowance, there was no scope for the application of the principle. The Magistrate, it was held, was free to enhance the allowance either from the date of the application for enhancement or from the date of the order. However, the Calcutta, Lahore and Cuttack High Courts in the decisions reported as *J.H. Arnroon v. Miss R. Sassoon* Air 1949 Cal 584, *Mt. Lilawanti v. Madan Gopal* Air 1935 Lah 24 and 1980 Cut L.R. 128, have been of the opinion that there is no power available with the Magistrate to allow increase in the allowance from the date of the application as that would amount to retrospective operation of the order. The increase, it was observed, could be from the date of the order itself. In this regard it was noted by the Cuttack authority that while Section 125(2) permitted the grant of allowance at the initial stage from the date of the application for maintenance, there was no corresponding provision in Section 127, and in the circumstances it should be assumed that the legislature did not intend to permit such enhancement retrospectively.

(9) A social legislation for the un privileged who are neglected and forsaken and who have no income of their own to support has to be liberally and beneficially construed. The effort should be to ensure that the purport of the legislation in real sense flows to them, and what is due to them is not denied, delayed or defected by technicalities, designs or motivation of the opposite side to thwart as long as possible, or the unfortunate delays which have come to stay in our system of administration of justice. In the present case the petition for enhancement though moved in August, 1977, could not bear result till August, 1983. Thus a period of 6 years was allowed to lapse. The course of conduct of the petitioner shows that she had been all through clamouring for higher maintenance. There is no reason why she should suffer in the very minimum maintenance payable for her living and upkeep for no fault of her own. To hold it otherwise, would be to provide a handle to any uncanny litigant to delay the proceedings as far as possible, and thus take advantage of his own wrong or bank upon the judicial delays. It would also stand in the way of consent orders. The proper approach to interpret Section 127 is to treat it as incidental provision to the main Section 125, and what is provided for in Section 125 is not taken away, unless specifically enjoined. I am therefore, of the

considered opinion that the petitioner is entitled to enhancement of maintenance from the date of the application in terms of what is stated in para 6 above. She will be entitled to maintenance allowance at the rate of Rs. 250.00 per month from 1-9-1977 Which will stand raised to Rs. 350.00 per month from 1-1-1980 and still raised to Rs. 450.00 per month from 1-1-1982

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