

Mohd. Tahir Vs. the State and Others

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Court : Delhi

Decided On : Aug-30-2001

Reported in : 2002CriLJ389; 94(2001)DLT454; I(2002)DMC102; 2002(61)DRJ68

Judge : Mr. S.K. Agarwal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125, 125(2), 397, 401 and 482

Appeal No. : Criminal Revision No. 241/1998

Appellant : Mohd. Tahir

Respondent : The State and Others

Advocate for Def. : Mr. O.P. Saxena, Adv.; Mr. P.S. Gahlot, Adv.

Advocate for Pet/Ap. : Mr. S.Q. Kazim and; Mr. F. Mohammad, Advs

Disposition : Petition dismissed

Judgement :

ORDER

S.K. Agarwal, J.

1. This petition u/s. 397/401 Cr. P.C. r/w. S. 482 Cr. P.C. is directed against the judgment and order dated 12-3-1998 passed by Sh. R.K. Yadav, ASJ, Shahdara

holding that the order of maintenance u/s. 125 Cr. P.C. in favor of respondent No.2 would operate from the date of the application.

2. Smt. Yasmin (respondent NO.2) and Master Shahbaz, minor through her mother, filed a petition u/s. 125 Cr. P.C. against the petitioner for grant of maintenance. It was alleged that respondent No.2 was married to the petitioner on 28th March, 1989 as per muslim rites and ceremonies. Respondent No.3 was born out of the said wed-lock. The petitioner mal-treated the respondent No.2 for bringing less dowry. She was deserted and was forced to live with her parents. Petitioner refused to take her back. It was stated that petitioner was working in the MCD. Respondent No.2 was un-educated and was not be able to maintain herself and her child. Petitioner filed reply stating that she had deserted the petitioner of her own choice and was not entitled to give maintenance. By order dated 17th December, 1996 trial court directed the petitioner to pay Rs.400/- per month to respondent No.2 and Rs.250/- per month to respondent No.3 towards maintenance, from the date of the order. Respondents herein filed a revision petition praying therein that the maintenance should have been granted from the date of the application and not from the date of the order. Learned Addl. Sessions Judge taking into consideration the fact that respondent No.2 was not responsible for the delay of disposal of the maintenance application, allowed the revision petition and ordered that the order of maintenance would operate from the date of the application i.e. from 24th April, 1991 subject to the adjustment of any interim maintenance paid by the petitioner to the respondent. The order by the Ld. Addl. Sessions Judge has been challenged by the petitioner.

3. Learned counsel for the petitioner has argued that respondent No.2 was a divorcee when she filed an application for grant of maintenance and being muslim she was not entitled for any maintenance. Under Section 125 Cr.P.C. Magistrate is empowered to order for maintenance of wife, children and parents if a person having sufficient means, neglects or refuses to maintain them. The Explanation provides that the wife would include a woman who has been divorced by or has obtained divorce from her husband and is not re-married. The petitioner in his reply in the trial court did not take this stand that respondent No.2 was divorcee and in any case, Explanation (b) of Section 125 provides that wife u/s. 125 Cr. P.C.

includes a woman who has been divorced by or has obtained divorce from her husband. In view of this Explanationn, there is no merit in this contention of the petitioner. Admittedly, respondent No.3 is the minor son of the respondent. The petitioner is liable to maintain him whereas he is living. The question as to the custody of the minor child is totally irrelevant to the proceedings under Section 125 Cr.P.C.

4. Sub-section (2) of Section Cr.P.C. gives discretion to the court to grant maintenance either from the date of the order or from the date of the application as it thus fit. The discretion is required to be exercised judiciously. In this case, petitioner for grant of maintenance was filed in the year 1991. Thereafter the matter was decided in the year 1995. Arrears till date have not been paid. During this period, there has been huge inflation in the economy. Petitioner is an employee of the MCD. His salary must have been substantially increased. Taking into consideration the fact that respondent No.2 was not instrumental in delaying the proceedings, learned Addl. Sessions Judge rightly directed the petitioner to pay maintenance to his wife and the minor child from the date of application subject to the adjustment of the payment made towards interim maintenance, if any, during the pendency of the proceedings. Further the arrears were permitted to be paid in Installments.

5. In view of the above, there is nothing in the impugned order to warrant interference at this stage. Dismissed.