Rakhi Vs. Pankaj Kumar

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Court : Delhi

Decided On : Jul-26-2005

Reported in : 123(2005)DLT268; II(2005)DMC501; 2005(83)DRJ509

Judge : R.S. Sodhi, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 125

Appeal No. : Criminal Revision Petition 166/2005 and Criminal Misc. Appln. 3832/2005

Appellant : Rakhi

Respondent : Pankaj Kumar

Advocate for Def. : Vivek Kumar, Adv.

Advocate for Pet/Ap. : B.K. Sharma, Adv

Judgement :

R.S. Sodhi, J.

1. Criminal Revision Petition 166/2005 is directed against the order dated 04.02.2005 of the Additional Sessions Judge, Delhi in Criminal Revision 55/2004, whereby the learned Judge has while interfering in an interim order passed by the Metropolitan Magistrate, Karkardooma, under Section 125 Cr.P.C. reduced the

interim maintenance directed to be paid to the wife holding that she was not entitled to any maintenance since she was an income tax payee.

2. Counsel for the petitioner submits that only an interim amount was fixed by the Metropolitan Magistrate and the order was not a final one. He further submits that the findings of the Additional Sessions Judge are wrong inasmuch as the petitioner being an income tax assessed is capable to maintaining herself. He submits that at the time of marriage in 2001, since there was a demand of car from the in-laws a sum of Rs.3,50,592/-(rupees three lakh fifty thousand five hundred and ninety two) was credited to the account of the petitioner, Ms. Rakhi, which was then passed on by way of a cheque towards the charges of Car and subsequently thereafter there was consistent decline in the credits in her account to the extent that on 07.03.2005 her account stands credited to the amount of Rs.1,322/- (rupees one thousand three hundred and twenty two). He submits that the petitioner is not working but is a housewife, looking after the child of the family.

3. Counsel for the respondent on the other hand, contends that that the respondent is a student of law and is not an earning member of the family and, thereforee, has got no income.

4. Heard counsel for the parties and have gone through the judgment under challenge and also the record placed before me. From a perusal there from, I find that the Additional Sessions Judge wrongly allowed the revision petition on the ground that the petitioners herein have not stated as to what is the respondent's share in the family business and have not been able to show the amount earned by the respondent. According to me the learned Judge failed to appreciate that the respondent being a partner of the family business, which according to the petitioner is returning an income of Rs.30,000/- per month, surely, cannot be said to be incapable of earning any income or not having a share in the income of the family. Even otherwise, to dis-entitle the wife from maintenance, only on the ground that she was an income tax assessed on account of having deposited a sum of Rs.3,50,592/- on 26.11.2001, at the time of her wedding for the purpose of a car cannot be treated as being her income on the basis of which she can continue to sustain herself when admittedly a car was purchased from that amount

which was brought by her to the matrimonial house and used by the family.

5. Looking at the matter as it stands it appears that the judgment under challenge is erroneous and that the learned Additional Sessions Judge ought not to have interfered at a stage when the Metropolitan Magistrate fixed only the interim amount in the proceedings under Section 125 Cr.P.C.

6. In that view of the matter, I set aside the order under challenge and allow Criminal Revision Petition 166/2005. However, since it is a matter concerning the livelihood of the petitioner the trial court is directed to expedite the trial. The petition is disposed of. Criminal Misc. Appl.3832/2005 is also disposed of.