

Sajeev Kumar Vs. Dhanya

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Court : Kerala

Decided On : Feb-08-2008

Reported in : II(2008)DMC19

Judge : R. Basant, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 125(4)

Appeal No. : R.P.F. (C) No. 417 of 2007

Appellant : Sajeev Kumar

Respondent : Dhanya

Advocate for Def. : K.S. Madhusoodanan,; K.B. Sujai Kumar,; T.V. Jayakumar N

Advocate for Pet/Ap. : Mansoor B.H., Adv.

Disposition : Petition dismissed

Judgement :

ORDER

R. Basant, J.

1. This revision petition challenges a direction under Section 125, Cr.P.C. issued by the Family Court to the petitioner to pay maintenance @ Rs. 1,500 and Rs. 750 per mensem respectively to his divorced wife and child.

2. The fundamental facts are not disputed. The marriage is admitted. The divorce under Ext. B1 order of the Family Court is also admitted. That divorce was granted on the ground of desertion by the wife is also not disputed. After the divorce, the divorced wife claimed maintenance under Section 125, Cr.P.C. as she continues to be a deemed wife under Explanation (b) to Section 125, Cr.P.C.

3. The petitioner attempted to resist the claim for maintenance on various grounds. It was contended that a woman who has suffered an order of divorce on account of contumacious matrimonial conduct on her part which led to the passing of the order of divorce is not entitled to claim maintenance under Section 125. It was also contended that in any view of the matter, under Section 125(4), Cr.P.C. the claimant/divorced wife is not entitled to claim maintenance. Of course contentions were raised that the claimant wife is not unable to maintain herself and that the petitioner/husband is not having sufficient means. The quantum of maintenance claimed was also dubbed as excessive.

4. Parties went to trial on these contentions. The claimant/wife examined herself as PW1 and proved Exts. P1 and P2. The petitioner was not available for examination as at the relevant time, he was not in India and was at some place abroad. His father and power-of-attorney was examined as CPW1. Exts. B 1 and B 2 were marked on his side.

5. The learned Judge of the Family Court on an anxious consideration of all the relevant inputs came to the conclusion that the divorced wife is entitled to claim maintenance notwithstanding the fact that the divorce was on the ground that she had deserted her husband. The learned Judge further came to the conclusion that Section 125(4), Cr.P.C. can have no application is the matrimonial tie is dissolved. It was further held that there is nothing to show that the claimant/wife is not unable to maintain herself and the materials available pointed to the truth of her assertion on that aspect. The contention of the husband that he does not have sufficient means was rejected on the basis of the evidence of PW1 and on the basis of his own admitted stand that he is continuing to reside abroad for a period exceeding one year. The learned Judge took the view that it would be puerile to assume that the petitioner was residing abroad without any employment there. It is, in these

circumstances, that the learned Judge proceeded to pass the impugned order directing payment of maintenance.

6. The petitioner claims to be aggrieved by the impugned order. What is the ground? The learned Counsel for the petitioner has been heard in detail. The learned Counsel for the petitioner advances various contentions to assail the impugned order.

7. First of all it is contended that the fault of the wife had led to the dissolution of the marriage and such a wife cannot be permitted to claim maintenance under Section 125, Cr.P.C. after the divorce.

8. I am unable to accept this contention at all. Courts have repeatedly held that the divorced wife who for the purpose of Section 125, Cr.P.C. continues to be a deemed wife as per Explanation (b) to Section 125, Cr.P.C. has no obligations which a woman in current matrimony has. It is unnecessary to advert to various precedents on the point. To my mind the extreme fact situation is seen considered and decided in *Valsarajan v. Saraswathy* : 2003(2)KLT548 . That was a case where the wife was refused maintenance on the ground that she was living in adultery. Later she suffered an order of divorce on the very same ground. After divorce, she renewed her claim for maintenance under Section 125, Cr.P.C. A learned Judge of this Court Justice N. Krishnan Nair in the said decision held that her claim as a divorced wife cannot be defeated on the ground that she was living in 'adultery' or had lived in adultery or had suffered an order of divorce on the ground that she was living in adultery.

9. Explanation (b) to Section 125, Cr.P.C. entitles a divorced wife to reckon her as a wife for the purpose of Section 125, Cr.P.C. and claim maintenance. The fiction cannot be extended beyond its purpose. Merely because she continues to be a wife for the purpose of claiming maintenance under Section 125, Cr.P.C. no husband can demand cohabitation with such divorced wife. No husband can demand that she should not desert him and must continue to live with him. No husband can insist that a divorced woman must remain loyal and chaste to him if she were to claim maintenance under Section 125, Cr.P.C. Those are not the contentions which the law permits a divorced husband to avail of. The fiction

incorporated by Explanation (b) to Section 125, Cr.P.C. can be pressed into service only as demanded or permitted in the context. That cannot obviously impose on the wife a duty to co-habit with the husband or justify the contention that she forfeits her claim if she continues the desertion. The first contention raised must hence fall to the ground.

10. Secondly, it is contended that their separate residence post-divorce must be held to be separate residence on mutual consent falling within the sweep of Section 125(4), Cr.P.C. It is not necessary for me to consider that contention in any greater detail. The decision of a Division Bench of this Court in A.S.N. Nair v. Sulochana 1981 KLT 568 and decision of the Supreme Court in Gurmit Kaur v. Surjit Singh @ Jeet Singh 1996 (1) KLJ 192 and Rohtash Singh v. Smt. Ramendri and Ors. : 2000 CriLJ1498 , have settled the position beyond the pale of controversy.

11. Undaunted, the Counsel contends that there is no evidence to show that the claimant lady is unable to maintain herself. On this aspect we have the evidence of the lady PW1 on the one hand and the testimony of the father of the petitioner/POA holder of the petitioner on the other. The Court below has considered the evidence and has come to the conclusion that the assertions of PW1 on that aspect have not been effectively controverted by the evidence of CPW1 and that in these circumstances it must be held that she is unable to maintain herself. That finding also does not at any rate warrant interference by invocation of the revisional jurisdiction of superintendence and correction.

12. The next contention is that the petitioner has not been proved to be a person, having sufficient means. Even assuming that he does not have any present employment, in the absence of a contention, or material to support such a contention, that he is ill and is unable to work and earn his livelihood, he, a young person, must be held to be obliged to work and earn his livelihood and also support the claimants. He must be held to be having sufficient means. It is unnecessary to go into that aspect in greater detail in this matter and we have satisfactory evidence to show that at the time of trial, the petitioner had already gone abroad and had remained there for a period of about 2 years by the date

when the order was passed. It would be puerile for a Court to assume that the petitioner, allegedly an unemployed individual, had gone to a foreign country just for enjoying himself. The inevitable inference is that he must have been remaining there for a period exceeding 2 years to work and earn his livelihood. The Court below cannot be said to have committed any error in drawing that inference of prudence from the materials available. The fourth contention urged must also hence fail.

13. Finally it is contended that the quantum of maintenance awarded is excessive. The amount awarded is only Rs. 1.500 and Rs. 750 per mensem respectively to the claimant/wife and child. Viewed from any angle, I am satisfied that the quantum fixed by that Court below is consistent with the materials available about the means of the petitioner and the needs of the claimants. The same also does not warrant any interference.

14. It follows that this revision petition deserves to be dismissed and the impugned order deserves to be upheld. I do so. This revision petition is accordingly dismissed.