

Augustine George Vs. Lizamma Thomas

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Court : Kerala

Decided On : Dec-18-2008

Reported in : 2009(1)KLJ80

Judge : R. Basant, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 125(3)

Appeal No. : R.P.F.C. No. 272 of 2007

Appellant : Augustine George

Respondent : Lizamma Thomas

Advocate for Pet/Ap. : V. Santharam and Anto Thomas, Advs.

Judgement :
ORDER

R. Basant, J.

1. When can a wife be said to 'refuse' to live with her husband or to disentitle her to receive maintenance under Section 125 Cr.P.C.? Is the traditional and conventional reluctance of a Court to grant the entire claim of a litigant justified

These questions come up for consideration in this proceedings.

2. The rival contestants in a claim for maintenance under Section 125 Cr.P.C. have come before this Court to assail an order passed. In that order, the learned Judge of the Family Court directed the respondent/husband (parties are referred in the manner in which they are arrayed in the M.C.) to pay maintenance at the rate of Rs. 600/- per mensem to the claimant, admittedly his wife.

3. Marriage is admitted. Separate residence is also admitted. There is no contention that the wife is not a person unable to maintain herself. The wife had claimed an amount of Rs. 1,000/- per mensem as maintenance. Along with the claim for maintenance, there were anterior proceedings between the parties pending before the Family Court. The husband had claimed decree for declaration of nullity of marriage and alternatively prayed for a decree for dissolution of marriage. The wife, in turn, had made a claim for return of ornaments, cash etc. which allegedly belong to her; but were in the possession of the husband. Those two petitions were taken up and disposed of together by a separate order. In the maintenance claim, there was only the evidence of the claimant/wife as PW1 and the respondent/husband as CPW1. Ext. A1 certificate of marriage between them was produced and marked.

4. It appears to me to be significant that there was no specific offer made by the husband to maintain the wife on condition that she lives with him. In fact, he took up a plea that the wife was insane and marriage was consequently null and void. He also raised a contention that the wife was residing separately without valid reason and therefore he was entitled to get a decree for divorce on the ground of desertion from her. It is significant to note that he did not raise a contention at all that he is willing to maintain the wife on condition that she lives with him.

5. The prayer for a decree for declaration of nullity of marriage was refused. However, the learned Judge of the Family Court proceeded to grant a decree for divorce on the ground of desertion. The learned Judge of the Family Court directed payment of only Rs. 600/- per mensem as maintenance under Section 125 Cr. P.C.

6. The petitioner claims to be aggrieved by the impugned order directing payment of maintenance. What is his grievance? He has already secured divorce and from

the date of divorce, he is, at any rate, liable to pay maintenance to his wife. He has challenged the order refusing the grant of decree for declaration of nullity of marriage. I shall assume that he succeeds in the appeal and secures a decree for declaration of nullity of marriage. Even then, till the date of such declaration of nullity of marriage, the petitioner is liable to pay maintenance to the claimant/wife as they are in current matrimony during such period.

7. The learned Counsel for the respondent/husband then contends that though he had set up a claim for declaration of nullity of marriage and alternatively for divorce, there is a finding that the wife had deserted him and therefore he is entitled to a decree for divorce. From this, the learned Counsel contends that the wife was residing separately without justifiable cause. Consequently, he contends that the husband is not liable to pay any maintenance to the wife. The learned Counsel relies on the separate common order dated 13-2-2007 passed by the Family Court in the two O.Ps filed by the contentants. The learned Counsel extracts observations/findings in paragraph 20 to contend that the contention raised by the husband was reckoned by the Family Court as expression of his willingness to take her back.

8. I am afraid, the valiant attempt made by the learned Counsel for the respondent/husband cannot succeed. It is by now trite that a wife can be said to refuse to live with her husband only if the husband makes an offer to maintain her on condition that she lives with him and she refuses such offer. In the instant case, I have been taken through the counter statement in the M.C. There is significant absence of any specific offer to maintain the wife on condition that she lives with him. There is no whisper of such an offer in the counter statement. The attempt to rely on the observations/findings in paragraph 20 of the common order in the O.Ps dated 13-12-2007 is not of any significance or consequence. In the decisions reported in *Mary v. Varghese* 2008(4) KLT 522 and *Zeenath v. Sulfikar Ali* 2008 (3) KLT 757, it has been clearly held that only when an offer is made in defence of a claim for maintenance, can the wife be said to refuse to live with her husband to attract the play of Section 125(3) (second proviso) and 125(4) Cr. P.C. Similarly, even the fact that the husband, at some anterior point of time, had made an offer which the wife had unjustifiably refused, is no sufficient reason to attract the play

of Section 125(3) (second proviso) and 125(4) Cr. P.C. It has clearly been held in *Mary v. Varghese* (supra) that the offer must be contemporaneous with the claim for maintenance under Section 125 Cr. P.C. That an anterior offer was made and the same was refused and that justified the grant of a decree for judicial separation, restitution of conjugal rights or divorce on the ground of desertion, cannot hence be an effective answer to the claim for maintenance raised by the wife. There must inevitably be a current and contemporaneous offer to maintain the claimant wife on condition that she lives with the husband. Only if she refuses to accept such an offer without sufficient reason or just ground can she be denied maintenance under Section 125 Cr. P.C.

9. Less said about the bona fides of the offer to maintain the wife the better. Declaration of nullity of marriage was claimed on the ground of the alleged insanity of the wife. The husband did not want the wife to co-habit with him. He, instead, chose to alternatively claim divorce on the ground of desertion. In these circumstances, the attempt now made to contend that there was impliedly an offer to maintain the wife on condition that she lives with him (flowing from the finding that there has been desertion) is again of no avail to the husband.

10. I am, in these circumstances, satisfied that the learned Judge of the Family Court is eminently justified in coming to the conclusion that the wife is entitled for separate maintenance. No interference whatsoever is necessary with that finding of the learned Judge of the Family Court.

11. The wife, in her challenge, contends that the quantum of maintenance awarded is perversely low. An amount of Rs. 600/- per mensem was awarded. She had, of course, claimed only Rs. 1,000/- per mensem. The husband, it is evident, is an able bodied person. He engages himself in agricultural activities, it is submitted. The amount claimed was only Rs. 1,000/- per mensem. The fact that the wife had claimed only a reasonable amount is no reason or justification to reduce the claim made by her further. It appears that there is a traditional reluctance on the part of Courts to grant the entire relief claimed. There is an unjustified assumption that all claims before Courts are exaggerated claims. The Court below also appears to have fallen prey to this unjustified assumption. To be

modest and reasonable in staking the claim is no indiscretion. The claimant cannot be put to sufference merely because she was modest and reasonable in her claim. Such a litigant deserves to be encouraged and not discouraged by courts. Message must go found and clear that a claimant who is reasonable, modest and fair in the claim staked before Court will be appreciated and will not be put to prejudice on that reason. Even reckoning the respondent/husband as just and able bodied person, I am satisfied that the claim made by the wife is eminently reasonable, just and fair. She is, going by the indications available about her needs as also the materials available about his means, certainly entitled for the amount claimed, that is Rs. 1,000/- per mensum. The court below has grossly erred in unjustifiably reducing the quantum of maintenance claimed and awarding only Rs. 600/- per mensem as maintenance.

12. In the result,

a) R.P.F.C. No, 272/2007 filed by the husband is dismissed.

b) R.P.F.C. No. 374/2008 filed by the claimant/wife is allowed. The quantum of maintenance awarded is modified and enhanced to Rs. 1,000/- per mensum.

13. The learned Counsel for the husband prays that the husband may be given some reasonable further time to pay the arrears of maintenance. It is for him to pay substantial amounts towards the arrears and satisfy the learned Judge of his bona fides and make a request for further time. Such a request will have to be considered by the learned Judge on merits and appropriate orders passed.

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