

Rukma Vs. Kheta Ram

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Court : Rajasthan

Decided On : Jan-24-1991

Reported in : 1991(1)WLN128

Judge : B.R. Arora, J.

Appeal No. : S.B. Cr. Misc. Application No. 14 of 1988

Appellant : Rukma

Respondent : Kheta Ram

Disposition : Petition dismissed

Judgement :

B.R. Arora, J.

1. This miscellaneous petition under Section 482 Cr.P.C. has been filed against the order dated July 8,1987, passed by the Additional Sessions Judge, Bikaner, by which the revision--petition filed by the petitioner was dismissed.

2. Smt. Rukma filed an application Under Section 125 Cr.P.C. for grant of maintenance to her from her husband Kheta Ram in the Court of the Chief Judicial Magistrate, Bikaner. The learned Chief Judicial Magistrate, after trial, by his order dated February 17,1986, rejected the application filed by the applicant. Dissatisfied with the order passed by the learned Chief Judicial Magistrate, Bikaner, the

petitioner preferred a revision-petition before the learned Sessions Judge, Bikaner, which was ultimately decided by the learned Additional Sessions Judge, Bikaner by his order dated July 3, 1987. The learned Additional Sessions Judge rejected the revision-petition filed by the petitioner by his order dated July 8, 1987. It is against this order that the present petition under Section 482 Cr.P.C. has been filed.

3. Heard learned Counsel for the petitioner and the learned Counsel for the respondent and perused the orders passed by the Courts below, as well as the record of the case.

4. It is not in dispute that there is a statutory bar under Section 397(3) Cr.P.C. for filing second revision petition by the same party and, therefore, to over-come this difficulty, the present petition under Section 482 Cr.P.C., has been filed. Merely by changing the nomenclature and mentioning this petition as under Section 482 Cr.P.C, the nature of the petition will not be changed. By this petition, the petitioner wants to get the order, passed by the learned Additional Sessions Judge, Bikaner, revised and in this view of the matter, the petition under Section 482 Cr.P.C. is nothing but a second revision petition, though styled as a petition under Section 482 Cr.P.C. The Supreme Court, in the case of *Ranjan Kumar v. The State of Karnataka* 1990 SCC (Cr.) 537, dealing with the maintainability of the petition Under Section 482, Cr.P.C. has observed as under:

Where a revision petition is dismissed by the Sessions Court, a second revision would not lie to the High Court. Merely by saying that the jurisdiction of the High Court for exercise of its inherent powers was being invoked, the statutory bar could not have been over-come. If that was to be permitted, every revision application facing the bar of Section 397 Cr.P.C. could be labelled as one Under Section 482.

5. In view of the statutory bar of filing second revision, laid down by the Code of Criminal Procedure Under Section 397, the party cannot be allowed to take recourse of Section 482 Cr.P.C and thereby circumvent the provisions of Section 397 Cr.P.C., particularly when none of the conditions required for the exercise of the inherent powers is present in the present case.

6. I have also looked-into the case on merit itself. Kheta Ram has specifically stated in his statement, as well as in the reply, that he never neglected to maintain the petitioner; on the contrary he was always ready to keep her with him and is still ready to keep her with him if she comes to him. Rukma, on the other hand, in her cross-examination before the learned Chief Judicial Magistrate has specifically stated that even if the non-applicant agrees to keep her with him even then she is not ready to go and live with him as she does not want to do so. For the grant of maintenance Under Section 125, Cr.P.C., no wife is entitled to receive any allowance from her husband Under Section 125 Cr.P.C. if she refuses to live with her husband, without any sufficient reason. Rukma in the present case, does not want to live with her husband and is living with her mother without any sufficient reason and, therefore, it cannot be said that the husband Kheta Ram has neglected or refused to maintain her. From the evidence produced by the parties, it is amply clear that the wife Smt. Rukma is living with her mother without any sufficient reason and cause and the husband has not neglected or refused to maintain her.

7. In this view of the matter, the orders passed by the learned lower Courts cannot be said to be in any way, incorrect, illegal or improper and does not require any interference.

8. Consequently, this revision-petition, filed by the petitioner, has got no force and is hereby dismissed.