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Court : Rajasthan

Decided On : Jan-06-1982

Reported in : 1982WLN(UC)16

Judge : M.B. Sharma, J.

Appeal No. : S.B. Criminal Revision No. 46/78

Appellant : Sujan Kaur

Respondent : State and anr.

Disposition : Petition allowed

Judgement :

M.B. Sharma, J.

1. This revision petition arises out of proceedings Under Section 488 Cr.PC (old), Smt. Sujan Kaur is the wife of Awtar Singh non-petitioner No. 2 and petitioners No. 2 & 3 Jeet Singh and Gurmeet Singh are the two minor sons, born out of the wedlock of Sujan Kaur with Awtarsingh. Smt. Sujan Kaur filed an application under Section 488 Cr.PC (old) for the grant of maintenance for herself and her two minor children against Awtar Singh. In the application, a case was set up that about five years prior to the filing of the application, which was filed on May 24, 1973 her husband Awtarsingh gave beating to her and she and her two minor children were

turned out of the house. Since then she was living with her parents and inspite of efforts Awtarsingh did not take her and the minor children. It was further mentioned in the petition that Awtarsingh was living jointly with his father and both were jointly cultivating 45 bighas of land and the annual income is Rs. 20.000/-. The application was contested by Awtar Singh. It was not disputed that Sujan Kaur is his wife or Jeet Singh and Gurmeet singh are his sons. According to Awtar Singh, he never maltreated Sujan Kaur, nor she was turned out of the house by him. She went off on her own accord along with the children and started living with her parents. Awtar Singh also offered to maintain Sujan Kaur and the two children provided they returned to him. It was further stated in the reply that he had no land of his own and he was earning his livelihood by labour, and it is difficult for him to earn Rs. 1000/- a year. The learned Magistrate under his order dated June 15, 1976 allowed the application and directed Awtarsingh to pay Rs. 45/- per month as maintenance to Sujan Kaur, Rs. 15/- per month to Jeet singh and Rs. 10/- per month to Gurmeet singh. It was further made clear that the minor will be entitled to maintenance till such time they a(sic)tain majority. The maintenance amount was allowed from the date of that application, that is June 11, 1973.

2. Awtar Singh filed a revision petition before the learned Sessions Judge, Sri Ganganagar and other revision petition was filed by Sujankaur for enhancing of the amount of maintenance. Both the revisions came up for hearing before the learned District judge, who under his order dated January 18,1977 allowed the revision of Awtarsingh, set aside the order of the learned Magistrate and dismissed the revision of Sujankaur. Sujankaur aggrieved against the order of the learned District Judge allowing the revision petition of Awtarsingh has preferred this revision petition.

3. The learned Magistrate held that Sujan Kaur was beaten and was turned out of the house. He, therefore, did not take in to consideration the offer of Awtarsingh to maintain Smt. Sujankaur only if she returns to him as in his opinion the offer was not bonalide. The learned District judge has not set aside the above finding of the learned Magistrate. He only considered the case that Sujankaur has failed to prove that she was turned out of the house because Awtarsingh wanted to bring another wife. Without setting aside the finding of the Magistrate on the point of

maltreatment of Sujan Kaur by her husband Awtar Singh, the learned Session Judge could not have reversed the order of the Magistrate. The other ground on which the learned District Judge has set aside the order of the learned Magistrate is that Sujan Kaur has failed to prove that she was unable to maintain herself or the minor children were unable to maintain themselves. No doubt under Section 488 of the Cr.P.C (old, only such wife or legitimate or illegitimate child who is unable to maintain itself and who is neglected or refused to be maintained by the husband or the father as the case may be, having sufficient means, is entitled to maintenance. I had occasion to deal with the provisions of Section 125 Cr.P.C. (New) in Banshilal v. Mangibai, S.B. Criminal Misc. petition No. 190/80 and Shanker v. Nosarbai, S.C. Cr. Misc. petition No. 197/81, decided on August 27, 1981. It was held in those cases that it is not obligatory on the part of the wife to aver and prove that she is unable to maintain herself though it will be better for the wife does so aver in the petition, the petition cannot be thrown out and the court will have to decide as to whether the wife is unable to maintain herself, on the material on record and on the circumstances of the case. It was also held that before granting maintenance to the wife from her husband who has sufficient means and has refused or neglected to maintain her, the court must show in its order that the wife is unable to maintain herself In the instant case it appears that in the petition under Section 488 Cr.P.C. it was clearly averred by the wife that she is living with her parents and she needs maintenance for herself & her minor children who need education also. A case was never set up by Awtarsingh that she has an income of her own or she is able to maintain herself. On the material on record, it can be said that Smt. Sujan Kaur was unable to maintain herself and the minor children. Therefore, she was entitled to maintenance for herself and her minor children, more so when the finding of the learned Magistrate that she was maltreated and turned out of the house was not set aside by the learned District Judge.

4. In the result, I will allow the revision petition, set aside the order of the Additional District Judge and restore the order of the learned Magistrate and the amount shall be payable from the date of the order of the learned Magistrate viz., June 15, 1976. To facilitate the payment of arrears it is hereby directed that Awtar Singh shall pay arrears in the monthly instalment of Rs. 70/- per month along with the

required payment of Maintenance at the rate of Rs. 70/- per month till the arrears are paid. In case of three defaults in payment of arrears, the amount in whole shall be recovered in lump sum.

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