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Court : Rajasthan

Decided On : Feb-22-1991

Reported in : 1991(1)WLN415

Judge : B.R. Arora, J.

Appeal No. : S.B. Cr. Revision No. 163 of 1988

Appellant : Vena Ram

Respondent : Mst. Anji Devi

Judgement :

B.R. Arora, J.

1. This revision petition is directed against the judgment dated June 2, 1988, passed by the Munsif and Judicial Magistrate, First Class, Desuri, by which the learned Magistrate allowed the application Under Section 125 Cr. P.C. filed by Smt. Anji Devi and awarded a maintenance of Rs. 350/- per month to her.

2. Smt. Anji Devi, on July 21, 1982, filed an application Under Section 125 Cr. PC against Vena Ram- the husband-in the Court of the Munsif and Judicial Magistrate, First Class, Desuri. It was alleged in the application that she was married to Vena Ram on April 22, 1977, and remained with the non-applicant Venaram up to June, 1981. Out of the wed-lock, a female child Sangita was born

on August 14, 1979 and a son Praveen was born on October 4, 1981. The non-applicant Venaram used to give beatings to her and in the month of 'VAISHAK' of the year 1981, she alongwith her husband had gone to attend the marriage of the cousin of her husband. Thereafter the non-applicant left her with her mother and after that time she was pregnant. Thereafter, he, by his letter dated June 14, 1981, sent a 'Talaknama' to her. A photo-stat copy of the letter was produced on the record by applicant Mst. Anji Devi. While living with her mother, the non-applicant asked her that he will send some amount to bear the expenses in the delivery and he will take her after the delivery. Neither the non-applicant took her with him nor did he send any amount and, therefore, she has been forced to live with her parents and as she is unable to maintain herself and her two children, therefore, an amount of Rs. 400/- per month as maintenance allowance was prayed to be allowed to her. The non-applicant contested the application and denied all the allegation made by the applicant. He has, also, contended that she is a lady of loose character and, therefore, by mutual agreement, 'CHHUTAPA', as prevalent in the community, was taken from her and, therefore, she is not entitled for any maintenance allowance. The applicant, in support of her application, produced herself as PW 1, Tejaram PW 2, and Lada PW 3. The non-applicant, in support of his case, produced himself as DW 1, Babar DW 2, and Laldas DW 3. The learned Magistrate, after consideration of the evidence produced by both the parties, came to the conclusion that the applicant is entitled for the maintenance allowance as the non-applicant. The learned Magistrate was, also, of the view that the applicant is unable to maintain herself. The learned Magistrate was, also, of the opinion that the non-applicant failed to establish the plea of divorce with mutual consent between the parties. He, therefore, looking to the facts and circumstances of the case, awarded a sum of Rs. 350/- per month to the applicant as the maintenance allowance.

3. I have heard the learned Counsel for the petitioner and the learned Counsel for the non-petitioner and perused the judgment passed by the learned lower Court and the record of the case.

4. The petitioner Venaram, in support of his case, submitted that the applicant Anji Devi is living in adultery and in support of this contention, he has produced himself

as DW 1, Babar DW 2 and Laldas DW 3. According to the petitioner, the applicant, Anji Devi has illicit relations with Ramesh, Umrao and Vimal. According to the petitioner, the applicant Anji Devi herself has admitted before him this fact and the talks between them were recorded in the tape, but this tape (cassette) has not been produced by the petitioner and it is stated that this cassette has been taken-away by the applicant Anji Devi. PW 2 Babar has stated that Anji Devi used to go in the factory. Similar is the statement of Laldas. Anji Devi (DW 1) has specifically denied the allegation of the petitioner with respect to her illicit relations with Ramesh, Umrao and Vimal. She has, also, denied that she had ever taken-away the cassette. From the reading of the evidence produced by both the parties, I am of the opinion that the evidence produced by Venaram does not inspire confidence and he has falsely levelled the allegation against the applicant Anji Devi in order to save himself from the liability of making payment of the maintenance allowance. As the petitioner has raised false allegation against the applicant Anji Devi regarding her character, on that score alone, Anji Devi is entitled to live separately from Venaram. I have, also, gone through the evidence produced by both the parties on the point whether the applicant Anji Devi is unable to maintain herself or not. After perusal of the evidence, I am of the opinion that neither she is going to any factory nor she is able to maintain herself. Therefore it is the duty of the petitioner Venaram to maintain his wife.

5. The another contention raised by the learned Counsel for the petitioner is that as Anji Devi has Taken 'CHHUTAPA' from the petitioner with consent and as she has been divorced with consent, she is not entitled for maintenance. I have considered the argument and perused the evidence produced by the parties on this aspect. From the perusal of the evidence on record, it has not been proved that any divorce ever took-place, by mutual consent. Neither there is any evidence on record from which it could be proved that any Panchayat had taken place or the proposal of divorce sent by the petitioner by his letter was ever accepted by Anji Devi. The evidence produced by the petitioner if lacking on this point of divorce by mutual consent. As the applicant is legally wedded wife of the petitioner and as no divorce had taken place, therefore, the applicant Anji Devi is entitled for maintenance from her husband Vena Ram.

6. Now comes the question how much amount of maintenance allowance should be allowed to Smt. Anji Devi? The learned Magistrate has allowed the maintenance allowance to the tune of Rs. 350/- per month. Looking to the rising prices, the amount of maintenance cannot be said to be excessive, but while awarding the maintenance, the condition of the husband should, also, be taken in to consideration. Even as per the applicant, the over- all pay of the non-applicant is Rs. 800/- per month. The husband Vena Ram has placed on record a certificate of pay, issued by the Tehsildar, which the petitioner is getting. According to the Pay Certificate dated May, 15, 1990, issued by the Tehsildar, the petitioner, in August, 1982, got only Rs. 610/- as his pay. In view of the pay of the petitioner and looking to the members of the family to whom the petitioner has to support, I think it proper to reduce the amount of maintenance from Rs. 350/- per month to Rs. 300/- per month. The petitioner should pay the maintenance allowance to the non-petitioner Smt. Anji Devi @ Rs. 300/- per month, with effect from the date of the application, i.e., from July 21, 1982. The petitioner may, however, pay the arrears of maintenance allowance in six instalments along with the monthly maintenance allowance. The arrears and the monthly maintenance allowance will be payable on or before 10th of every month.

7. In the result, the revision-petition, filed by the petitioner is partly allowed. The amount of maintenance is reduced from Rs. 350/- per month to Rs. 300/- per month and the petitioner is allowed to pay the arrears of the maintenance allowance in six instalments along with the monthly maintenance allowance on or before 10th of each month.

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