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Court : Rajasthan

Decided On : Jul-19-1989

Reported in : 1989WLN(UC)39

Judge : Milap Chandra, J.

Appeal No. : S.B. Civil Revision Petition No. 432 of 1987

Appellant : Mst. Dhola

Respondent : Kaka Singh

Disposition : Petition allowed

Judgement :

Milap Chandra, J.

1. This revision petition has been filed against the order of the Additional District Judge No. 1, Hanumangarh dated 21st March, 1976 by which he partly allowed the application of the petitioner moved under Section 24, Hindu Marriage Act, 1955 (here in after referred to as 'the Act'), simply granted litigation expenses at rate of Rs. 25/- per month and refused to grant maintenance on the ground that order under Section 125, Code of Criminal Procedure, 1973 has already been passed. The application was moved by her in the case started by her husband Kaka Singh under Section 9 of the Act.

2. Notice was issued to the non-petitioner for showing cause as to why revision petition be not admitted and allowed at the admission stage. Despite service of the notice, none has put appearance for and on behalf of the non-petitioner Kaka Singh.

3. It is contended by the learned Counsel for the petitioner that the learned lower court has seriously erred in refusing to grant maintenance on the ground that an order has already been passed under Section 125, Cr.P.C. He contended that despite this order, maintenance could be granted under Section 24 of the Act. He also contended that the grant of litigation expenses at rate of Rs. 25/- per month is not in accordance with the provisions of Section 24 of the Act and the learned trial court should have granted a lump-sum amount to meet the litigation expenses. He lastly contended that the monthly maintenance should be granted at least at rate of Rs. 200/- and Rs. 500/- be granted as litigation expenses.

4. The learned Additional District Judge, Hanumangarh has refused to grant maintenance under Section 24 of the Hindu Marriage Act on the ground that the petitioner Mst. Dhola has already been granted maintenance at rate of Rs. 150/- per month under Section 125, Code of Criminal Procedure, 1973. The provisions of Section 24, Hindu Marriage Act are not subject to the provisions of Section 125, Code of Criminal Procedure, 1973. The trial court should have awarded maintenance under Section 24 of the Act, it has no justification to refuse it on the ground that an order under Section 125 of the Code of Criminal Procedure has already been passed. Mst. Dhola has categorically stated in her affidavit that despite order under Section 125, Cr.P.C. her husband is not paying a single pie towards maintenance. In *Surjeet Kaur v. Heera Singh* AIR 1978 P&H 12, it has been held that jurisdiction of the subordinate court relief under Section 24 of the Hindu Marriage Act is not ousted by mere pre-existing order of a Criminal Court under Section 125, Cr.P.C. 1973.

5. Now the question arises about the quantum of maintenance. Mst. Dhola has stated in her petition that her husband Kaka Singh possessed 11 Bighas of agricultural land. Neither the particulars of this land nor any revenue record relating to it has been filed. Kaka Singh and his three witnesses have stated in

their affidavits that he is not possessed of any agricultural land and he is earning his livelihood as a labourer. In the statement recorded in the case under Section 9, Hindu Marriage Act, he has disclosed himself as a labourer. In view of the facts and circumstances, it is very difficult to bold that Kaka Singh possesses or cultivates 11 Bighas of agricultural land. It may be mentioned here that Kaka Singh and his witnesses have not disclosed in their affidavits the extent of his earning as a labourer. The rate of minimum wage is Rs. 18/- per day. In the year 1985, the Additional Chief Judicial Magistrate, Hanumangarh granted monthly maintenance to Mst. Dhola and her daughter at rate of Rs. 100/- and Rs. 50/- respectively under Section 125, Cr.P.C. The non-petitioner Kaka Singh has not stated in his reply that this order granting maintenance at rate of Rs. 125/- per month has been challenged by him. It would thus be inequitable and inadequate to grant maintenance at a lower rate.

6. Lump-sum amount is generally awarded to meet the litigation expenses. The Additional District Judge, Hanumangarh has granted Rs. 25/-per month as litigation expenses. An amount of Rs. 500/- would be quite reasonable and adequate.

7. Consequently, the revision petition is allowed. It is directed that the non petitioner Kaka Singh will pay maintenance to her wife Mst. Dhola at rate of Rs. 150/- per month from the date of the petition, i.e., 16-11-1985. He would be entitled to adjust the amount paid by him to Mst. Dhola in compliance with the order dated April 13, 1985 of the Additional Chief Judicial Magistrate, Hanumangarh passed under Section 125, Cr.P.C. 1973. Rs. 500/- will also be paid by Kaka Singh to Mst. Dhola as litigation expenses. The order of the Additional District Judge, Hanumaugarh dated March 20, 1987 is modified to this extent.