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Court : Rajasthan

Decided On : Mar-29-1989

Reported in : 1989WLN(UC)101

Judge : Farooq Hassan, J.

Appeal No. : S.B. Cr. Misc. Application No. 320 of 1988

Appellant : Bhanwar Lal

Respondent : Smt. Prem

Disposition : Criminal

Judgement :

Farooq Hassan, J.

1. Heard learned Counsel for the parties.

2. The only point urged by the learned Counsel for the applicant is that the learned subordinate Court fell in error in arriving to this conclusion that the income of the applicant is about Rs. 800/- (Rupees eight hundred) and that the petitioner is earning through the land occupied by him. The learned Counsel contended that the petitioner is getting Rs. 560/- (Rupees Five Hundred Sixty) as Beldar in the Irrigation Department, Learned Counsel for the non-petitioner, on the other hand, contended that the order passed by the learned subordinate court is just and

proper, and there is no infirmity in the said order. I have considered the points raised by the learned Counsel for the parties and perused order of the subordinate courts.

3. It has not been disputed that the petitioner is a Beldar in the Irrigation Department. The learned subordinate courts were of the opinion that though the petitioner is a Beldar, but it can be presumed that he has been drawing the salary of class IV servant, and that the petitioner is drawing more income from agricultural land. But looking to the entire record, in my view it appears that no evidence was adduced by the non-petitioner in order to conclude that the petitioner is drawing income from his agricultural land. Thus, the learned subordinate Courts were not justified in observing that the petitioner can be treated as Class IV servant and it committed error in assuming that the petitioner is drawing salary of Class IV servant. Learned counsel for the petitioner filed a certificate issued by the Assistant Engineer Irrigation Department, Sub Division, Tonk, which shows that the petitioner is drawing a monthly salary of Rs. 560/-. In this view of the matter, the Subordinate Courts have committed serious illegality in quantifying the amount of earnings of the petitioner, and further, the learned Subordinate Courts fell in error in observing that the Petitioner is having a source of income through agricultural land because no evidence in this regard has been produced by the non-petitioner and in this view of the matters, it can be said that such a finding of the Subordinate Court is without any basis.

4. In view of the aforesaid circumstances, it can, how ever, be said that the petitioner is earning Rs. 560/- per month, So looking to the earnings of the petitioner, it will be just and proper to reduce the amount of maintenance from Rs. 250/- to Rs. 200/- which will be apportioned among the non-petitioner and her daughter in equal shares i.e. each of them will get Rs. 100/- as maintenance.

5. This miscellaneous petition is therefore, partly allowed. The amount of maintenance is reduced from Rs. 250/- to Rs. 200/- in the ratio of fifty fifty i.e. Rs. 100/- each to the non-petitioner and to the daughter of the parties. It is expected that the original Court shall consider sympathetically the payment of arrears which is to be paid by the petitioner to the non-petitioner.

