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Smt. Gerki Vs. Duda Ram

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Court : Rajasthan

Decided On : Apr-06-1994

Reported in : 1994(1)WLN581

Judge : B.R. Arora, J.

Appeal No. : S.B. Criminal Miscellaneous Petition No. 168 of 1993

Appellant : Smt. Gerki

Respondent : Duda Ram

Disposition : Petition Dismissed

Judgement :

B.R. Arora, J.

1. This miscellaneous petition is directed against the order dated 4-2-93, passed by the Additional Sessions Judge, Sojat (district Pali) by which the learned Additional Sessions Judge partly allowed the revision petition, filed by the petitioner, maintained the order granting maintenance passed by the learned Munsif and Judicial Magistrate, Jaitaran, and allowed Rs. 300/- for medical expenses.

2. Applicant Smt. Gerki W/o Duda Ram filed an application under Section 125 Cr.P.C. on 21-1-82 for the grant of maintenance to her. This application was

opposed by the husband, viz. Duda Ram. The case of the applicant petitioner, as unfolded in the petition, is that she was married to Duda Ram about twenty-eight years before and lived with him upto 5-10-80, when she was turned-out from the house by the husband and her husband contacted second marriage with one Mst. Gugli and, now, they are living as husband and wife. Applicant Smt. Gerki, therefore, claimed that she may be awarded Rs. 250/- per month as maintenance and she should, also, be awarded Rs. 500/- for medical expenses. This application was opposed by the husband. It has been admitted by the husband that the applicant Smt. Gerki lived with him as his wife for about twenty years but as no child was born out of this wed-lock, therefore, on her own request and persuasion he contacted Natra-marriage with Mst. Gugli about fifteen years before and even thereafter the petitioner Smt. Gerki lived with him. She left his house with her own accord on 5-10-80. The allegations of cruelity was, also , denied and it was stated that the applicant herself is earning lady and is able to maintain herself and, therefore, she is not entitled for any amount of maintenance. The applicant, in support of her case, examined herself as PW 1 and produced in her evidence PW 2 Prema, PW 3 Rashul and PW 4 Man Singh Bhandari. The non-applicant, in defence, examined himself as NAW 1 and produced NAW 2 Bhoma Ram, NAW 3 Gayad Ram, NAW 4 Mishri Lal, NAW 5 Suja Ram, NAW 6 Duda Ram, NAW 7 Chhagna Ram, NAW 8 Heera Ram and NAW 9 Bhera Ram. The learned Magistrate, after trial, came to the conclusion that the applicant is unable to maintain herself and she has been neglected by her husband and as the husband has contacted second marriage, therefore, she has reasons to live separately from the husband. The learned Magistrate, therefore, awarded a sum of Rs. 125/- per month as maintenance from the date of filing the application, i.e., with effect from 21-1-82. No appeal or revision against this order has been filed by the husband but the petitioner, looking to the inadequacy of the amount of maintenance, filed revision petition, which was decided by the learned Additional Sessions Judge, Sojat. The learned Additional Sessions Judge, Sojat, maintained the order, passed by the learned Magistrate so far as the grant of maintenance is concerned, but, however, he awarded Rs. 300/- as medical expenses to the wife. It is against this order that the petitioner has filed the present miscellaneous petitions.

3. It is contended by the learned Counsel for the petitioner that the award of Rs. 125/- per month as maintenance, in the facts and circumstances of the case is most inadequate and nobody can maintain at this paltry amount of Rs. 125/- per month and, therefore, the respondent may be directed to pay her an adequate amount of maintenance so that she may make the two ends meet. The learned Counsel for the respondent, on the other hand, has supported the order passed by the Courts below.

4. I have considered the submissions made by the learned Counsel for the parties.

5. The learned Magistrate, while awarding the maintenance to the petitioner, has considered the financial position and social status of the husband and the liabilities on his shoulders to maintain other members of the family. The learned Magistrate has taken into consideration the fact that the husband has his mother, the second wife, three daughters and two sons and he has to maintain them, also. Looking to the age of the husband and his income, which depends upon the agriculture, the learned Magistrate rightly awarded Rs. 125/- per month as maintenance to the petitioner. Though this amount appears to be on the lower side and one cannot maintain in such a paltry amount, but looking to the financial position and the social status of the husband at the relevant time, this amount appears to be reasonable. If after the date, from which the maintenance was granted (i.e. after 21-1-82) the income of the husband has increased and looking to the rise in the prices of the essential commodities the applicant finds herself unable to maintain in such a paltry amount then she may file an application under Section 127 Cr.P.C. for revising the amount of maintenance, but so far as the impugned orders are concerned, they do not require any interference as they were passed after taking into consideration the income of the husband, his financial position, social status and the liabilities on the husband.

6. In this view of the matter, I do not find any merit in this miscellaneous petition and the same is hereby dismissed.

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