

Vidhya Vs. Jagdish

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Court : Rajasthan

Decided On : Feb-05-2009

Reported in : 2009(2)WLN577

Judge : Bhanwaroo Khan, J.

Appellant : Vidhya

Respondent : Jagdish

Judgement :

Bhanwaroo Khan, J.

Petitioner Vidhya wife of respondent Jagdish having three children filed a petition under Section 125 Cr.P.C. in the trial Court i.e. Judicial Magistrate, 1st Class, Anta for grant of maintenance for herself and for her three children. The trial Court after recording evidence of the parties and hearing both the sides vide order dt. 11.01.2005 granted maintenance to the three children but rejected the claim of maintenance of the petitioner. An unsuccessful revision filed by the petitioner came to be decided on 10.05.2005 by the Special Judge, SC/ST (Prevention of Atrocities) Cases, Baran up holding the order of the trial Court. Feeling aggrieved by both the orders, the petitioner has approached this Court by filing the present petition under Section 482 Cr.P.C.

2. The facts of the case in brief are that the petitioner filed a petition under Section 125 Cr.P.C. before the trial Court with the averments that she is the legally wedded wife of respondent Jagdish. Out of their wedlock three children were born. The respondent used to harass her on account of dowry demands and also belaboured her many times. Therefore, she started living with her father. It was also averred that the respondent is a public servant serving in RAC and drawing a handsome monthly salary. In his written reply, the respondent has denied the allegations and submitted that because of his serving in armed force it is not possible for him to keep the wife with him regularly. He denied the demand of dowry at the time of marriage and also about any cruelty and mental torture. However it was submitted that he is ready to keep the wife and children with him. From the side of the petitioner she appeared as AW. 1 and also examined two other witnesses namely Keshari Lal AW. 2 and Dhuli Lal AW. 3. From the side of the respondent, the respondent Jagdish appeared as DW. 1. During his examination respondent Jagdish produced two photographs.

3. The trial Court after recording evidence of parties and hearing both the sides allowed maintenance to the three children but rejected the claim of the petitioner on the basis of the two photographs produced by the respondent during his examination holding that she was living in adultery with another person.

4. Heard learned Counsel for the petitioner. None appeared on behalf of the respondent.

5. Learned Counsel for the petitioner submits that there was not an iota of word in the written reply of the respondent about the act of the petitioner living in adultery with another person and simply on the basis of two photographs produced during the examination of the respondent, the conclusion derived by the trial Court is absolutely illegal as the petitioner was not having any opportunity to rebut the same. Learned Counsel further submits that for adultery there must be some specific allegation and the petitioner should have been given an opportunity to rebut the same. There was no allegation in the reply of the respondent about the factum of adultery and simply on production of two photographs with a person it cannot be said that the petitioner was living with adultery with someone else and

on this basis if her claim for grant of maintenance if rejected is illegal and not as per the norms of the law.

6. After hearing learned Counsel for the petitioner, I have gone through both the impugned orders as well as the material and evidence available on record.

7. From the material and evidence available on record it cannot be disputed that while replying the petition under Section 125 Cr.P.C. filed on behalf of the petitioner and her three children the respondent has not levelled any allegation about adultery against the petitioner. Moreso, no question about the said fact was ever put to her in her cross-examination and it is for the first time that during the statement of the respondent himself he has come with this allegation that she was living with adultery with some Farid and produced the two photographs (D/2 and D/3), which was the sole basis of the conclusion derived by the trial Court regarding adultery but this is absolutely illegal as firstly there was no pleading of the respondent regarding the factum of adultery; secondly, she never got any chance to rebut the same in her cross-examination. Simply production of photographs with a person cannot lead to a presumption that the petitioner was living in adultery with the person with whom she had the photographs. Thus, the conclusion of the trial Court cannot be allowed to sustain as the basis of the conclusion is illegal and the orders passed by the trial Court rejecting the claim of maintenance of the petitioner and so also the revisional Court vis-a-vis the petitioner deserve to be quashed.

8. Consequently, this petition under Section 482 Cr.P.C. filed on behalf of the petitioner is allowed in part and the order dt. 11.01.2005 passed by Judicial Magistrate, 1st Class, Anta rejecting claim of the petitioner for grant of maintenance under Section 125 Cr.P.C. and also the order dt. 10.05.2005 passed by Special Judge, SC/ST (Prevention of Atrocities) Cases, Baran dismissing the revision filed by the petitioner are quashed and set aside. The matter is remanded back to the trial Court for afresh decision on the claim of the petitioner to receive maintenance under Section 125 Cr.P.C. in the light of the above observations after giving opportunity of hearing to both the parties. However, the order about grant of maintenance to three minor children will remain intact.

9. Office is directed to return the record of the case to the trial Court immediately.

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