

Vijay Kumar Vs. Suresh Kumar

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Court : Rajasthan

Decided On : Apr-12-2001

Reported in : I(2002)DMC391; 2001WLC(Raj)UC545

Judge : N.P. Gupta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125; Indian Penal Code (IPC) - Sections 494 and 498A

Appeal No. : Criminal Revision Petition No. 103 of 2001

Appellant : Vijay Kumar

Respondent : Suresh Kumar

Advocate for Def. : Pradeep Shah, Adv.

Advocate for Pet/Ap. : G.R. Punia and; R.S. Choudhary, Adv.

Disposition : Petition allowed

Judgement :

ORDER

N.P. Gupta, J.

1. The petitioner's mother Ganga Devi had filed an application under Section 125, Cr. P.C. against the non-petitioner claiming maintenance for herself and her minor

son making requisite averments. On this application, the the Trial Court vide order dated 27.10.1994 passed an order for interim maintenance, which order was confirmed in revision by order dated 13.9.1995. Thereafter the learned Trial Court after completing the necessary trial, vide order dated 12.9.1997 passed the final order awarding a sum of Rs. 500/- per month to the wife Ganga Devi, and identical sum to the petitioner minor son. This amount was payable w.e.f. 31.3.1994 (application under Section 125, Cr. P.C. filed on 21.3.1994) and directed that whatever amount may have been paid by way of interim maintenance shall be adjusted, and that the amount of maintenance payable to the son shall be payable till his attaining majority. Against this order a revision was filed wherein the case was remanded vide order dated 4.1.1999. The main consideration for remand was that the learned Trial Court should pass detailed order and give appropriate finding with respect to income of the husband and on that basis should pass a proper order. After remand the learned Trial Court again passed the order on 15.5.1999 and again accepted the application for maintenance and awarded the maintenance to the above extent w.e.f. 21.3.1994.

2. Aggrieved of this order the non-petitioner filed a revision before the learned Sessions Judge which has been decided by the impugned order dated 20.12.2000, and the learned Sessions Judge noticed that the wife Ganga Devi has already expired, that after considering the contention of the non-petitioner, rather offer of the non-petitioner to keep the petitioner with him, negated the contention and upheld the impugned order by recording the following finding at page-3.'

(Vernacular matter omitted)

3. With this finding the learned Revisional Court directed that whatever amount has been deposited in pursuance of the earlier order of this Court should be put into fixed deposit, and the interest accruing thereon shall be paid to the person in whose guardianship the son lives, and that amount shall be spent for his maintenance. The award of maintenance of the petitioner in the sum of Rs. 500/- was upheld by it has been directed that this amount shall be payable now since December, 2000. Thus in substance all the arrears of maintenance payable from 21.3.1994 to the petitioner so also maintenance from 21.3.1994 till death of Ganga

Devi were all indirectly set aside, by confining this amount to the amount already deposited in pursuance of the order of this Court and to the amount already paid.

4. It is this part of the order only which is assailed by the petitioner. It is contended by the learned Counsel for the petitioner that when the learned Revisional Court itself also found that the learned Trial Court was right in making award of maintenance to the extent of Rs. 500/- to the wife as well as to the petitioner, there was no occasion or authority for the learned Revisional Court to order that since wife has already expired no amount need be paid. It is contended that in the totality of circumstances in which the wife had been neglected, simply because she could sustain herself after filing application for maintenance by whatever means (beg, borrow or steal), the non-petitioner cannot claim any divided (dividend ?) on that count, simply because she could not sustain any more and expired. It is contended that in any case when the liability of the husband has been finalised, the amount became an asset of the deceased mother capable of being inherited by the petitioner as a legal heir under Section 15(1) of the Hindu Succession Act. Likewise regarding the maintenance of the petitioner, it is contended that there was no occasion whatever for directing the maintenance to be payable only from December, 2000 instead of w.e.f. 21.3.1994 as ordered by the learned Trial Court.

5. Controverting the contentions it is contended that the maintenance was payable to the wife for herself, and since she had already expired nothing is required to be paid to her. So far as amount of arrear becoming asset is concerned, it was contended that the non-petitioner is the husband and he also is entitled to inherit the property and as such since the amount of Rs. 20,000/- has already been put into fixed deposit, appropriate additional amount can be and should be fixed by way of maintenance to the wife. Regarding the maintenance to the son it is contended that prior to December, 2000 substantial amount has already been paid, and is being regularly paid, and therefore, this part of the order is not required to be interfered with. It is also contended that the husband is very poorly placed, and is not in a position to make all the payments as claimed by the petitioner, and, therefore, also a compassionate view may be taken and the impugned order be maintained. It was also given out that the non-petitioner is

prepared to keep the petitioner with him.

6. Having considered the submission, I am unable to agree with the learned Counsel for the non-petitioner. As I find from the record that the non-petitioner is already facing prosecution for the offence under Sections 494 and 498-A, I.P.C. I find the certified copies of the order on record which show that the non-petitioner unsuccessfully tried to have the prosecution quashed. I need not say anything about his aspect more, lest it may prejudice either of the parties in the trial of the criminal case. However, looking to the plurality of the litigations that had gone between the parties, and the fact that the wife could no more sustain and ultimately expired, I am not unclaimed (inclined ') to extend any sympathy to the non-petitioner.

7. Admittedly the impugned order so far as it upheld the finding of the learned Trial Court to award maintenance of Rs. 500/- to the wife, and another sum of Rs. 500/- to the son has not been assailed by the non-petitioner. In this view of the matter when the award of maintenance has been upheld, the non-petitioner cannot escape the liability for making payment of maintenance for the wife, for the period 21.3.1994 onwards till she died, and likewise for payment of maintenance to the son from 21.3.1994 onwards till he attains majority.

8. As a result of the above, the revision petition is allowed. The impugned order is modified, and it is directed that the non-petitioner shall be liable to pay maintenance for the wife Ganga Devi w.e.f. 21.3.1994 till she died. Out of this amount whatever amount has been put into fixed deposit shall be adjusted, and the balance amount when recovered from the non-petitioner shall also be put into fixed deposit and the interest accruing on that amount will be withdrawable by the person who is working as a guardian of the petitioner, and that amount shall have to be spent for the maintenance of the son. Likewise the petitioner shall be liable to pay maintenance for the son @ Rs. 500/- per month w.e.f. 21.3.1994, till he attains majority and out of this amount again whatever amounts have been paid by the non-petitioner so far shall all be adjusted by the learned Trial Court.

9. The arrears as payable above may be paid by the non-petitioner within a period of six months today. In the event of failure to pay within six months, the amount of

arrears shall carry interest at the rate of 9% p.a. Parties are left to bear their own costs.

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