

Surya Narain Vs. Mohini Devi

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Court : Rajasthan

Decided On : May-10-2001

Reported in : II(2001)DMC554; 2001WLC(Raj)UC456; 2001(4)WLN693

Judge : Shashi Kant Sharma, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125(3)

Appeal No. : Criminal Revision Petition No. 22 of 1999

Appellant : Surya Narain

Respondent : Mohini Devi

Advocate for Def. : Resham Bhargava, Adv.

Advocate for Pet/Ap. : M.K. Kaushik, Adv.

Disposition : Revision Petition dismissed

Judgement :

Shashi Kant Sharma, J.

1. This criminal revision petition filed by Surya Narain, petitioner-husband is directed against the order dated 16.12.1998 passed by the learned Judge, Family Court, Ajmer whereby the learned Judge has ordered the petitioner-husband to make payment of maintenance to respondent/wife from May, 1997 to May, 1998.

In this matter, notice was issued to the non-petitioner/wife and Mr. Resham Bhargava, Advocate put in appearance on her behalf. Record from the Court below was called for. Arguments of the learned Counsel for the parties are heard and the entire record is examined.

2. It is argued on behalf of the petitioner-husband that the non-petitioner-wife Mohini Devi delivered a child on 12th of March, 1997 and, therefore, it is clear that the non-petitioner Mohini Devi lived with the petitioner-husband. It is also argued that the petitioner-husband is a poor person. The non-petitioner/wife herself is guilty and she is harassing the petitioner. She is not even caring her child. It is then urged that the impugned order is passed on the basis of an application under Section 125(3), Cr.P.C. which was filed on 2nd June, 1998 and she could not claim maintenance for more than one year from that date. Therefore, the order passed by the learned Judge, Family Court for making payment of maintenance from May, 1997 is illegal and it should be set aside. It is also contended that even if the Court does not set aside the order under challenge in the revision petition then the petitioner should be given liberty to file an application before the learned Counsel below for modification/cancellation of the original order of maintenance passed under Section 125, Cr.P.C.

3. On behalf of the non-petitioner/wife the learned Counsel contended that the order of the learned Judge, Family Court is completely legal one. The Court has passed an order for giving maintenance from May, 1997 to May, 1998 and even if the non-petitioner/wife has delivered a child on 12th of March, 1997 even then there was no bar for granting maintenance from May, 1997. It is contended that the non-petitioner/wife lived for some time with the petitioner-husband. It is contended that the learned Court below has ordered for giving maintenance from May, 1997 and, therefore, the act of giving birth to a child on 12th of March, 1997 is, immaterial. It is also argued that there is order of giving maintenance in the favour of the non-petitioner/wife which was passed by the learned Court below in the year 1986. Against which order, one revision petition was filed which was dismissed by the Additional Sessions Judge, Ajmer in the year 1988 and then the matter came to this Court and the matter was finally disposed of in April, 1990. Thus, it is contended that on the date when the non-petitioner/wife filed an

application for recovery of the maintenance under Section 125(3), Cr.P.C. the order of maintenance was already existing in her favour and the learned Court below has only directed the petitioner-husband for making payment of arrears from May, 1997 to May, 1998 for 12 months during that period, the order of maintenance was in existence and that order of maintenance is still existing. Until and unless, the original order granting maintenance is modified or cancelled and if the order of maintenance is still in existence, the wife/non-petitioner is entitled to recover the amount of maintenance under that order.

4. Before dealing with the arguments of the parties, it is necessary to consider the relevant provision of Section 125(3), Cr.P.C. which empowers the Court to order recovery of maintenance within one year from the date on which it becomes due, which runs as under :

'125(3). If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment is sooner made :Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due.'

5. I have considered the rival contentions and examined the entire record. Even if it is taken that the non-petitioner-wife had delivered a child on 12th March, 1997 even then this fact has no relevance with the impugned order because by the impugned order, the learned Counsel below has directed the petitioner-husband to make the payment of arrears of maintenance from May, 1997 that is after delivery of the alleged child. So far as the argument that the wife is harassing the petitioner-husband is concerned, this argument has no relevance in the present situation. If the petitioner-husband wants to get the order passed under Section 125, Cr.P.C. to be modified or cancelled then he will have to approach the Court which has passed the original order under Section 125, Cr.P.C. with such prayer.

6. In my view, the impugned order passed by the learned Judge, Family Court, Ajmer on 16.12.1998 is absolutely legal. The Court was competent to direct the petitioner-husband to make payment of maintenance for one year upto May, 1998 in view of provisions of Section 125(3), Cr.P.C, which empowers the Court to issue warrant for levying the amount due in the manner as provided for levying fines and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due. In the present case, the amount of maintenance for the month of May, 1997 became due in the month of June, 1997 and the non-petitioner/ wife filed the application on 2nd of June, 1998. In my view, the impugned order is neither illegal nor perverse and no miscarriage of justice has been done.

7. The revision petition is devoid of any merit and is liable to be dismissed. If the petitioner-husband wants to get the original order of maintenance passed under Section 125, Cr.P.C. to be cancelled or modified, then he is at liberty to move to the original Court for doing so under the relevant provisions of law. With these observations, the revision petition is dismissed.

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