

Smt. Mango Vs. Mangtu

Smt. Mango Vs. Mangtu

SooperKanoon Citation : sooperkanoon.com/889395

Court : Himachal Pradesh

Decided On : Jul-18-1975

Reported in : 1976CriLJ93

Judge : D.B. Lal, J.

Appellant : Smt. Mango

Respondent : Mangtu

Judgement :

ORDER

D.B. Lal, J.

1. This is a reference presumably under Section 438 of the Code of Criminal Procedure from the order of the Additional Sessions Judge, Dharamsala. The facts giving rise to the reference are, that on 17-2-1970 an application for maintenance under Section 488 of the Code of Criminal Procedure was filed by Smt. Mango Devi against her husband Mangtu and the usual allegations were that he has neglected and refused to maintain her as well as their infant child and as such maintenance at the rate of Rs. 150/- per mensem for herself and Rs. 50/- per minor child were claimed. It appears, on 10-2-1968 a similar application for maintenance was filed by Smt. Mango but the case was compromised at that stage. The husband promised to take Smt. Mango to live with him and also to maintain her as well as her child. As the husband subsequently resiled and

refused to maintain her and the child, the second application under Section 488 was instituted on 17-2-1970. The learned Magistrate dismissed the petition on the ground that previously the matter was compromised and no second application could be instituted. Rather Mango should file a civil suit setting the previous compromise incorporated in a Civil Court decree.

2. Smt. Mango came in revision before the learned Additional Sessions Judge and succeeded. The contention of Mangtu was set aside that the second application was not maintainable or that Smt. Mango should have gone to Civil Court to file a civil suit. The learned Sessions Judge has awarded Rs- 100/- per mensem as maintenance to Smt. Mango and her child. He has recommended the case to the High Court for accepting his recommendation to that effect.

3. The learned Counsel for Mangtu opposed the reference made by the learned Sessions Judge- However, the reference was supported by the counsel on behalf of Smt. Mango. It is contended in the foremost that the Magistrate had no jurisdiction to entertain the second application for maintenance. To me it appears the objection is devoid of any merit. It is true the compromise was arrived at between the husband and the wife but if the husband subsequently resiled and neglected or refused to maintain the wife or their child, a fresh cause of action arose for an application for maintenance under Section 488- The previous compromise had really the effect of condonation on the part of the petitioner of the neglect or refusal and she should be deemed to have withdrawn her petition at that stage, When the husband subsequently ran counter to his promise and deliberately resiled from the compromise, the neglect or refusal to maintain the wife and the child gave a fresh cause of action to them for instituting an application under Section 488. The finding of the Magistrate as well as of the learned Sessions Judge has been that Mangtu has neglected or refused to maintain Smt. Mango and their child. In the circumstances the Magistrate had the jurisdiction and his decision against that was decidedly incorrect

4. In fact Smt. Mango is not enforcing the compromise in the present proceeding. The said compromise, can be availed of by the husband provided he proved that he had not neglected or refused to maintain them or that he was sticking to the

terms of the compromise. This he failed to establish and there the compromise ended- A fresh ground could be availed of by Smt. Mango and her child since the husband neglected or refused to maintain them. As such the second application was really a fresh application which could not be considered as one enforcing the compromise but was to be considered on merit independent of that compromise. No doubt the fact regarding compromise could be availed, of by either party to substantiate their individual allegation.

5. It is then contended that a civil suit has been filed by Smt. Mango, perhaps may be for maintenance but no detail regarding that suit was given. As such a suggestion to that effect will not oust the jurisdiction of the Criminal Court.

6. It is admitted on all hands that no Nyaya Panchayat was functioning on the date the application for maintenance was filed. As such the jurisdiction vested with the Magistrate. That apart, any provision made to that effect in the Nyaya Panchayat did not deprive the Magistrate of his own jurisdiction to entertain an application under Section 488. As such the application could not be dismissed, on any such ground.

7. The learned Counsel stressed that a new case was set up by the learned Sessions Judge inasmuch as he availed of the statement of Mangtu that he disowns the child and accuses Smt Mango of immorality and he further availed of the fact of another wife living in the house along with Smt. Mango as a sufficient reason for her refusal to live with him. At any rate both these facts had some on the record under a legitimate process and the parties very well knew what case they had to meet. No prejudice as such was caused to Mangtu and the two circumstances pointed out above, could certainly be availed of by the learned Sessions Judge. When the husband denies the parentage of the child he indirectly refers to the unchastity of the woman. The accusation of adultery is sufficient cause for refusal on the part of wife to reside with the husband. Similarly another wife is decidedly living in the same house and Smt. Mango can perhaps say that she was not aware of the first marriage and she will refuse to live with Mangtu because of it.

8. In this view of the matter, nothing substantial could be made out against the reference and the recommendation made by the learned Sessions Judge must be accepted- The decision for maintenance under Section 488 and the maintenance amount-awarded by the learned Additional Sessions Judge and the date from which such amount is payable are confirmed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com