

Gangi Devi Vs. Alam Chand

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Court : Himachal Pradesh

Decided On : Apr-09-1996

Reported in : II(1996)DMC242

Judge : R.L. Khurana, J.

Acts : [Constitution of India](#) - Article 227; ;[Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 125(4)

Appeal No. : Cr. M.P. (M) No. 874 of 1989

Appellant : Gangi Devi

Respondent : Alam Chand

Advocate for Def. : K.D. Sood and; B.K. Sood, Adv.

Advocate for Pet/Ap. : B.K. Malhotra, Adv.

Disposition : Petition dismissed

Judgement :

R.L. Khurana, J.

1. By virtue of the present petition made under Article 227 of the [Constitution of India](#), the petitioner is seeking appropriate directions for quashing and setting aside of the order dated 6.7.89 passed by the Additional Sessions Judge, Mandi,

dismissing the revision petition of the petitioner and thereby affirming, the order of the Judicial Magistrate 1st Class (3), Mandi passed on 17.8.88.

2. The petitioner is the wife, while the respondent is the husband.

3. The petitioner, for and on behalf of herself and her two minor daughters and one minor son, had filed a petition under Section 125 of the Code of Criminal Procedure (hereinafter referred to as the Code) seeking maintenance for herself and her minor children. The said petition, in so far as the petitioner is concerned, was dismissed by the Judicial Magistrate 1st Class (3), Mandi. The petition, in respect of the minor children was, however, allowed and maintenance was awarded in their favour by the learned Magistrate.

4. The petitioner by way of a revision petition approached the Additional Sessions Judge, Mandi against the order dated 17.8.88 of the learned Magistrate, whereby, her petition for maintenance under Section 125 of the 'Code' was dismissed. The learned Additional Sessions Judge, vide the impugned order dated 6.7.89 has dismissed the revision petition and affirmed the order of the Magistrate refusing maintenance to the petitioner.

5. Feeling aggrieved the petitioner has now approached this Court by way of the present petition under Article 227 of the [Constitution of India](#). It has been averred that the two Courts below have erred in coming to the conclusion that the petitioner had herself deserted the respondent without a reasonable and -sufficient cause and that she was not entitled to claim maintenance.

6. I have heard the learned Counsel for the parties and have gone through the record of the case.

7. At the very outset an objection has been raised on behalf of the respondent as to the maintainability and the competency of the present petition. It has been contended that in view of the specific bar to a second revision petition, the petitioner cannot invoke the jurisdiction of this Court under Article 227 of the [Constitution of India](#). In AIR 1979 Supreme Court 1, Chandrasekhar Singh and Ors. v. Siya Ram Singh and Others, it has been held that the power of

Superintendence under Article 227 of the Constitution cannot be invoked to correct an error of fact which only a superior Court can do in exercise of its statutory power as the Court of Appeal and that the High Court cannot in exercise of its jurisdiction under Article 227 convert itself into a Court of appeal.

8. The High Court of Andhra Pradesh in 1996(1) HLR 91, M. Shiv Raj v. The IXMetropolitan Magistrate, Hyderabad and Ors., while dealing with a case under Sections 123 and 127 of the Code of Criminal Procedure has held that the essential purpose of the use of the powers vested in High Court under Article 227 of the [Constitution of India](#) is only in exceptional and grave cases to prevent miscarriage of justice. Under Article 227, the High Court cannot assume the appellate powers to correct any mistake of law. There should be a question of assumption of excessive jurisdiction or refusal to exercise jurisdiction or irregularity or illegality in procedure or breach of rule of natural justice or error apparent on the face of the record.

9. While dealing with the provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, under which no second appeal or revision is provided for, in (1995) 6 Supreme Court Cases 576, Laxmikant Revchand Bhojwani and Anr. v. Pratapsingh Mohansingh Pardeshi, it has been held by the Hon'ble Apex Court that the High Court under Article 227 of the [Constitution of India](#) cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes.

10. Applying the above test to the present case, the petitioner has failed to satisfy any of the requirements as contemplated before this Court for interference with the order passed by the Additional Sessions Judge on 6.7.89.

11. The procedure contemplated under Section 125 of the Code is in the nature of summary proceedings. The party who is not in a position to maintain himself/herself on being refused to be maintained, is entitled to move the Competent Court under Section 125 of the Code, seeking maintenance. Sub-section (4) of Section 125 of the Code, further, inter alia, provides that no wife

shall be entitled to receive an allowance from her husband under this section if she without any sufficient reasons refuses to live with her husband.

12. The two Courts below, upon appreciation of evidence led by the parties, have come to a concurrent findings that the petitioner is living separately I without any sufficient and reasonable cause, and as such, she is not entitled to maintenance. Such concurrent findings of the two Courts below cannot be interfered with by this Court in exercise of the powers under Article 227 of the [Constitution of India](#).

13. In the present case, neither there is any question of assumption of excessive jurisdiction by the Courts below nor there is any refusal to exercise the jurisdiction. No Irregularity or illegality in procedure or breach of rule of natural justice has been pointed out. There is also no error apparent on the face of the record.

14. Since the petitioner has failed to show sufficient grounds for invoking the powers of this Court under Article 227 of the [Constitution of India](#) to interfere with the impugned order of the learned Additional Sessions Judge, Mandi, there is no merit in the present petition and the same is accordingly dismissed.