

Gurdev Singh Vs. Daljit Kour

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Court : Jammu and Kashmir

Decided On : Mar-22-2002

Reported in : 2003(2)JKJ518

Judge : S.K. Gupta, J.

Acts : Jammu and Kashmir Code of Criminal Procedure (CrPC) - Section 488

Appeal No. : Cr. Ref. No. 20/2001

Appellant : Gurdev Singh

Respondent : Daljit Kour

Advocate for Def. : Surinder Kour, Adv.

Advocate for Pet/Ap. : D.S. Saini, Adv.

Judgement :

S.K. Gupta, J.

1. By means of this reference learned Addl. Sessions Judge Jammu had made recommendation for quashing the order formulated by trial Magistrate on 21.9.2000 awarding Rs. 500 to the petitioner as interim maintenance.

2. Facts relevant for the disposal of this reference in resume are detailed hereunder:--

'An application came to be initiated by Smt. Daljit Kour for the grant of maintenance allowance under Section 488, Cr.P.C in claiming that her marriage with non-applicant was solemnized according to Sikh rites and customs at Golgajral, Jammu on 18.10.97, Soon after marriage non-applicant and his mother started taunting and causing harassment to the applicant for having brought less dowry and even used to chastise her physically on paltry matters and penultimately turned her out of the matrimonial house after 2 months of the marriage. Applicant however made an other attempt to return to the matrimonial house after Staying with her parents for a space of 6 months but was extended the same maltreatment by the non-applicant and his family members and turned her out from the house after about 18 days. That the applicant has since been neglected and refused to be maintained by her husband-non-applicant who deserted her. During the currency of these proceedings interim maintenance was allowed @ Rs. 500 p.m, to the applicant by the trial Magistrate effective from the date of application till the final disposal of the main petition for maintenance, on 21.9.2000.

3. Aggrieved by the aforesaid order non-applicant sought its reversal in a revision petition commenced before the Court below on the ground that Smt. Inderjit Kour was his legally wedded wife and out of consummation of marital tie a son was born to them. The non-applicant also denied any marital relationship with Daljit Kour applicant. He also contended that in view of his subsisting marriage with Inderjit Kour, unless a valid marriage with Daljit Kour applicant is established, no maintenance allowance could have been allowed by the trial Magistrate. The claim of the applicant before the trial Magistrate regarding the beating administered by the non-applicant and his mother and pressurising for more dowry was also denied by the non-applicant. Similarly, the non-applicant also refuted the allegations of the applicant to have been turned out of the matrimonial house firstly after 2 months of the marriage and secondly when she returned to the matrimonial house, 18 days thereafter.

4. On the other hand, the applicant Daljit Kour herein respondent, in Support of her claim, filed an affidavit in sustenance of the recitals in the application and also a Certificate of marriage from Gurudawara Shri Nanak Dev Ji with regard to the solemnization of the marriage of Daljit Kour with Gurdev Singh according to rites

applicable to Sikh Community on 19.10.97 both on merits in the main case as well as for grant of interim relief. The trial Magistrate on examination of the whole matter awarded interim maintenance of Rs. 500 by means of order dated 21.9.2000.

5. Mr. D.S. Saini, learned advocate appearing for the petitioner, vehemently urged that the Judicial Magistrate while granting interim maintenance has proceeded on the' ground that Daljit Kour respondent is the legally wedded wife of the petitioner which in view of the emphatical denial by the petitioner and controversy raised in the main petition that during the subsistence of the first marriage with Inderjit Kour, the respondent is neither his wife nor can claim to be legally wedded wife, as such is not entitled to maintenance in the main petition or by way of interim relief either. His further contention is that it was incumbent upon the Magistrate to enquire into the matter at least for subjective satisfaction prima-facie for the marriage between the parties before allowing interim maintenance.

6. Mrs. Surinder Kour, learned counsel, appearing for the respondent on the other hand submitted that before granting interim maintenance as in civil cases the Magistrate would call upon the applicant to file an affidavit stating the grounds in support of the claim for interim maintenance to satisfy himself that there is a prima-facie case for making such an order. Such an order may also be passed in an appropriate case ex parte. The Magistrate however is not required to go into the matrimonial disputes between the parties and examine the whole evidence threadbare to exercise his jurisdiction for grant of interim maintenance. The trial court is to take only a prima-facie view of the matter and once a case is made out and the court returns a finding and grant interim maintenance to the destitute wife, it does not call for any interference in revision.

7. It is well established that the powers of the criminal courts under Section 125 of the Central Criminal Procedure Code, 1973 (corresponding to Section 488 of the J&K; Criminal Procedure Code, 1989 (1933 A.D) are limited in scope and the orders passed thereunder are subject to any final adjudication which may be made by a Civil court as respects the civil rights of the parties. The section provides only a speedy remedy against starvation lest the discarded wives, helpless and

deserted children may not be deprived of much needed relief from the husband/father as the case may be. Strictly speaking the word 'maintenance' itself is very eloquent to express that it is a speedy remedy given to starving wives and children so as to they may not go astray.

8. A wife under Hindu Law has enforceable right against her husband for her maintenance and yet Section 125 enables her to resolve this summary remedy. If however, the wife has proved herself entitled to maintenance under this section then is not necessary to further probe with regard to the status of the parties which otherwise would have the effect of defeating the rights conferred by the Legislature on the destitute women or children who are victims of the social environment. An order under Section 125 does not finally determine the status, rights and obligations of the parties but only provide for maintenance of indigent wives and children. The right given by this section to a wife to claim maintenance from her husband is a statutory right which is independent of the personal law of the parties and is not affected or governed by it. The only condition precedent to the possession of that right in the case of a wife is the existence of a conjugal relations. The term 'wife' will thus include only a legally married wife. Where the very factum of marriage and relation ship of husband and wife is denial, the applicant/respondent will have to prove that she is the wife of the non-applicant-petitioner. But the standard of proof required in proceedings under this section need not be as high as in other cases.

9. In the instant case, the petitioner has emphatically stated that he is married with one Inderjit Kour and a son is born out of their conjugal relationship. That during the subsistence of this marriage with Injerjit Kour no second marriage could be solemnised with the applicant herein respondent. According to the petitioner, respondent is not his legally wedded wife nor they ever lived together as husband and wife, whereas applicant respondent claimed that her marriage with the petitioner was solemnised on 18.10.1997 at Gole Gujral, Jammu. Daljit Kour petitioner however stated least either in her main petition under Section 488, Cr.PC petition for claiming interim maintenance that her marriage with Gurdev Singh peti-tioner-non-applicant was solemnized in Gurudawara Shri Guru Nanak Dev Ji. A Certificate of marriage produced by Daljit Kour to support her recitals in

the application to be legally wedded wife of the non-applicant-petitioner is dated 19.10.97. A plenary reading of the Certificate clearly demonstrates that their marriage in the Gurudawara was solemnized on 19.10.97 as against the averments in the petition that their marriage was solemnised on 18.10.97 at Gole-Gujral Jammu. Apart from that, normally marrying a woman during the life of the first husband will not give the woman status of a wife. When the first wife is living and the man contracts a second marriage with another woman, the second marriage is void ab initio and the woman he marries cannot be claimed maintenance. Where marriage is void ab initio, Section 125 does not apply to a de facto wife. To women not lawfully married, Section 125 has no application. The existence and continuation of conjugal relationship is the foundation of an order directing payment of maintenances under this section. The Magistrate is therefore bound to take note of the woman's status as a wife before granting maintenance. It therefore makes it abundantly clear that a Magistrate must prima-facie satisfy himself from a limited enquiry on the basis of the material before him that the applicant is a legally wedded wife before awarding maintenance.

10. The trial Magistrate seems to have proceeded on the Judgment in case *Kanshi Ram v. Banso Devi*, 2000 KLJ 94 without understanding its true import. There is no conflict with the law laid down in the aforesaid case but its applicability depends on the fact of each case. It is apt to point out that the Magistrate at the time of formulating the order of interim maintenance in favour of the applicant-respondent has not taken note of denial of marriage with the non-applicant, during the subsistence of the first marriage with Inderjit Kour out of whom a child is also born and also that the certificate of marriage demonstrates its performance in Gurudawara Shri Nanak Dev Ji on 19.10.97 contrary to the averments in the petition about the marriage performed in Gole-Gujral on 18.10.97 and also without adverting to the status of the petitioner claiming maintenance on the date of the application granted interim maintenance which has resulted into abuse of the process of the court. A woman, therefore, must come within the terms of a 'wife' prima-facie for the purposes of determining the question relating to the grant of interim maintenance.

11. For the aforesaid reasons, reference made by Addl. Sessions Judge, Jammu is accepted and the order passed by the trial Magistrate dated 21.9.2000 awarding interim maintenance is quashed and set aside, The trial court is further directed to enquire into the matter afresh with regard to the existence of conjugal relationship between the parties for a prima-facie satisfaction and pass an appropriate order in the facts and circumstances of the case. Registry is directed to remit back the record to the court below forthwith so as to reach there on 19.4.2002 where the parties through their counsels are directed to cause appearance. Any observations made herein-above shall remain confined Only to the disposal of this reference without having any bearing on the merits of the case.

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