

Lekh Ram Vs. Bimla Devi and Others

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Court : Himachal Pradesh

Decided On : Apr-01-2011

Judge : V.K. Sharma, J.

Acts : Code of Criminal Procedure (CrPC) . - Sections 397, 125

Appeal No. : Cr. Revision No. 219 of 2003

Appellant : Lekh Ram

Respondent : Bimla Devi and Others

Advocate for Def. : Mr.J.R.Thakur, Adv.

Advocate for Pet/Ap. : Mr. Sumeet Sharma, Adv.

Judgement :

1. The challenge herein in this revision petition under Section 397 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C'), is against the order dated 24.4.2003, of the learned Sessions Judge, Bilaspur, Himachal Pradesh, in criminal revision No. 26/10 of 2001, whereby order dated 16.10.2001, passed by the learned Addl. Chief Judicial Magistrate, Ghumarwin, District Bilaspur, H.P., dismissing the application under Section 125 Cr.P.C filed by the respondents herein (wife and children) against the petitioner herein (husband), has been set aside and monthly maintenance of ` 300/- to the wife and `100/- each to the children, has been granted from the date of application, that is, 30.12.1998.

2. The inter se relationship between the parties is admitted. The marriage between petitioner No.1 and the respondents was solemnized somewhere in the year 1987. Petitioners No. 2 and 3 were born out of the wedlock. At the time of filing of the application for maintenance, they were aged 9 and 6 years, respectively. It was further averred by the wife that she lived with the husband for about eight years, but the relations between them remained strained. He did not at all care for her. He also refused and neglected to maintain her and the children and often used to tell her to get out of the matrimonial home and threatened her that he would remarry. It was also alleged that he also used to beat her occasionally. She suffered many physical and mental hardships during the aforesaid period of eight years. Later on, he started giving beatings to her quite often. Ultimately, she along with the children were turned out of the matrimonial home by him and per force they had to take shelter in the cowshed. According to the wife, she is unable to maintain herself and the children. The respondent, who is an able bodied person was earning ` 100/- per day and was having monthly income of ` 3000/-. A sum of ` 500/- per month each was claimed by the wife and children as maintenance from the husband.

3. The husband contested the petition on the averments that the wife and the children are residing with him under the same roof and he was maintaining them properly. The application for maintenance has been filed just to harass him. According to the husband, he was ready and willing to maintain the wife and children in future as well.

4. The learned trial Magistrate had dismissed the claim of the wife and the children for maintenance mainly on the ground that the parties are living under the same roof and that since the children were school going it can be reasonably inferred that their expenses were being borne by the husband.

5. The learned Sessions Judge has reversed the above findings holding that the husband had neglected and refused to maintain the wife and children and they were compelled to take shelter in the cowshed and that the inference drawn by the learned trial Magistrate that since the children were school going, it can be reasonably expected that they were being maintained by the husband are

conjectural in nature.

6. From the evidence led on behalf of the parties, it is manifest that the husband had been suspecting the fidelity of the wife. In cross examination, it was suggested to her that the children were not born out of the lions of the husband, which imputation has been emphatically denied by her. A combined and harmonious reading of the deposition of the wife as PW-1, would go to show that the husband had neglected and refused to maintain her and the children and he had turned them out of the matrimonial home and per force they had to take shelter in the cowshed. She was also supported by PW-2 Shri Mehar Singh, who is her father and PW-3 Shri Sunder Singh, who have stated that the wife and the children are being maintained by her father. The husband, who has appeared as RW-1, has admitted that the wife and the children are living in the cowshed. She is bearing the expenses of their education. RW-2 Shri Ashok Kumar, has also admitted that the wife and the children are living in the cowshed. RW-3 Shri Bansi Ram, is the father of the husband. He has admitted that the children are school going and they are living with their mother in the cowshed.

7. Thus manifestly there was neglect and refusal on the part of the husband to maintain the wife and children.

8. On appraisal of the evidence on record, I am satisfied that the findings returned by the learned Sessions Judge, upsetting those of the learned trial Magistrate, are correct and legal and do not suffer from any impropriety and do not call for any interference at the hands of this court.

9. In view of the above, the petition is dismissed.

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