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Court : Delhi

Decided On : Apr-11-2012

Judge : Suresh Kait

Appeal No. : CRL.M.C. No. 66 of 2011

Appellant : Krishna Dhawan

Respondent : State and Another

Judgement :

SURESH KAIT, J.

1. The instant petition is being filed to assail the impugned order dated 25.01.2010, whereby the Id. MM dismissed an application filed by the petitioner for her maintenance under Section 125 Cr.P.C.

2. Also challenged the order dated 22.11.2010, passed by Id. Sessions Judge, whereby he dismissed the Revision Petition filed by the petitioner on being aggrieved against the order dated 25.01.2010 mentioned above.

3. Id. Counsel for the petitioner submitted that courts below came to the conclusion that against the cruelty being committed by the respondent, no complaints were ever made by the petitioner. And she failed to prove her beatings of several time, as no medical evidence could be produced.

4. Admittedly, the petitioner is not an earning member and unable to maintain herself, has been ignored by the two courts below. Due to minor contradictions in her cross-examination, the trial court dismissed her application under Section 125 Cr. P.C.

5. Both the Courts below have observed that as alleged by the respondent no.2, petitioner is suffering from abnormal mental condition since beginning for which the respondent has been getting her treatment regularly for which he felt to be duty-bound.

6. The courts below have come to the conclusion, on the basis of that respondent no. 2 is ready to keep the petitioner with him and shall provide all the necessary facilities to her, but the petitioner refused the offer of the respondent no. 2. Therefore, courts below have concluded that petitioner has left her matrimonial home at her own will without sufficient reasons and living separately from the respondent. Therefore, respondent no. 2 is not liable to maintain the petitioner.

7. Before this Court also, on specific asking from the petitioner, she refuses to live with respondent no.2, though respondent no. 2 submitted that he does not know as to why she is not willing to stay with him, though he is ready to maintain her and provided all the facilities and will keep her happy.

8. I have heard learned counsels for parties.

9. The provision of Section 125 Cr.P.C. is a welfare provision, meant for monthly allowance for the maintenance of his wife, or such child, father or mother, if he or she is not able to maintain herself. However, as provided under Section 125(4) Cr.P.C., that no wife shall be entitled to receive an allowance from her husband, if she is living in adultery or if without any sufficient reasons, she refuses to live with her husband or if they are living separately by mutual consent. The Courts below have relied on this provision, while dismissing the application filed by the petitioner.

10. Section 125 (1) of the Code of Criminal Procedure confers the right to any wife who is unable to maintain herself, to claim maintenance from her husband if he

has sufficient means but neglects or refuses to maintain her. It is not as if every wife is entitled to maintenance irrespective of other factors.

11. If a person is willing to maintain his wife in accordance with his civil obligation, there is neither neglect nor refusal. Ordinarily, if husband provides a congenial matrimonial home to his wife; is, under no further obligation to pay maintenance, if she, notwithstanding that he has a home where she could live a pleasant life while discharging her obligations as wife, wants to be in her own home, where she expects the husband to join her company. If such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, in such a case, Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

12. If a person had been ill-treating his wife, as a consequence of which she had to leave, apart offers to take back his wife to his home when threatened with action, the court may examine the circumstances closely to determine whether the offer is genuine or bona fide. There may be other similar circumstances, but suffice to say would be that, in such a case as before me where the parties have been living together happily, however, the petitioner / wife might had some problem at the matrimonial home may be due to conduct of respondent or some third person in the house.

13. The relevant question in such a case is, why the wife is refusing to live with her husband despite his offer? Want of bona fides in the husband's offer has necessarily to be judged in the background of the justification pleaded by the wife for her refusal to live with him and not divorced of it. Absence of any imputation of misconduct on the part of the husband is relevant. The wife, when in the box, was asked whether she would live with her husband. She shows no justification for refusing to live with him except one and that is that by convention and usage in the area, wives are entitled to call upon their husbands to live in their houses. The validity in that case, if the wife refused to live with the husband in his legitimate, even if there is a case that it is the practice in the locality for the husband to live in the wife's home. There is no law that of obliging the husband to be a resident at

the family home of the wife nor is any practice or convention shown assuming that this would make any difference. If there is obligation to maintain one's wife the husband may choose his home and it is at that home that the wife has to live unless there are specific and valid reasons why that may not be practicable in any given instance. There is an obligation on the part of the wife to give her attention to the husband and if she does not feel inclined to discharge such obligation the husband is not without any remedy.

14. Under Section 125(1)(a) Cr.P.C. maintenance allowance cannot be granted to every wife, who is neglected by her husband or whose husband refuses to maintain her and can only be granted to a wife who is unable to maintain herself.

15. In the case in hand, the respondent no.2 is working a Junior Engineer, whereas the petitioner is not earning anything, and age is such, she is not able to ear her livelihood.

16. Having recourse to the facts and circumstances of the instant case, I find that the application filed by petitioner, under Section 125 Cr.P.C. for maintenance was dismissed by the courts below solely on the ground that the petitioner had left her matrimonial home on her own accord and could not place any evidence on record, of her being living separately.

17. In the facts and circumstances of the instant case, I am of the considered opinion that Courts below perhaps lost sight of the background in which the petitioner was compelled to leave her matrimonial home. The declaration of a married destitute lady can be obtained in various manners in coercive situation at her matrimonial home by extending threats and putting risk at her life which can well be inferred from the contents of the petition or in the proceedings under Section 125 Cr.P.C. The Id. Courts below lost the sight to the Para 7 of the complaint filed by the petitioner as under:-

“That the parties have lived together and have completed almost 23 years of their married life and it does not behove to the petitioner to rack up and create unnecessary and unwarranted situations, which are certainly likely to cause disruption in their married life”.

18. In the case in hand, petitioner alleged in the complaint that respondent No.2 invariably beaten the petitioner, though she could not prove through any medical documents. The cruelty can be mental, by conduct, by gesture, by ignoring or may be thousands of reasons. But for cruelty being committed, it is not necessary that the wife has to prove by medical report only.

19. Admittedly, in the present case, the petitioner is not an earning member and is staying with her old aged mother, who is just surviving on the pension. The petitioner has no source of income, whereas respondent no. 2 is working as a Junior Engineer. Also, the petitioner does not belong to a family of good financial background, therefore in such a situation provision of Section 125 Cr.P.C. do not bar to maintain the wife.

20. First, it is the duty of the husband to provide the wife a congenial atmosphere, if not, at least maintain to the extent that she can survive in the society with dignity.

21. Admittedly, present marriage between petitioner and respondent is second marriage. There is no issue from this wedlock. Though, there is no allegations against the petitioner on this issue, however, the respondent badly neglected her, therefore, even today, when she is totally in bad condition, not ready to join her husband.

22. I find no justification of dismissing the contention of the petitioner by the trial court and confirmed by Revisional Court. Therefore, keeping the facts and circumstances of the case, the impugned order dated 25.01.2010 passed by the Id. MM and order dated 22.11.2010 passed by the Revisional Court are set aside. Consequently, petitioner is entitled to get the maintenance and respondent no. 2 is liable to pay the same.

23. Now-a-days, cost of living so expensive. Even for a single person for normal survival Rs.10,000/- required, in case, the person has no liability of paying the rent of the house. In the present case, petitioner is staying in her mother's house, therefore, she has no such liability.

24. On the other hand, respondent no. 2 is working as JE and getting more than Rs.22,000/- per month after all deductions, if the other source of income is not taken into consideration. He has to maintain her old/ ailing and bed-ridden mother and has some other liabilities as well.

25. Therefore, keeping all the facts and circumstances of the case into view, I deem it appropriate that at least the petitioner is entitled for Rs.5,000/- per month as maintenance. Accordingly, Respondent no. 2 shall pay the aforesaid amount from the date of this order.

26. Accordingly, Flood Control Department, Govt. of NCT Delhi is directed to deduct Rs.5,000/- from the salary of respondent no. 2 and deposit the same in the bank account of the petitioner.

27. Therefore, the petitioner shall furnish her bank account particulars to the office of Respondent no. 2 for disbursement of maintenance amount.

28. Copy of this order be sent to Incharge / Head of the Flood Control Department, Govt. of NCT of Delhi for immediate compliance.

29. Accordingly, Crl. M.C. 66/2011 is allowed on the above terms.

30. Trial Court Record be remitted back henceforth.

31. No order as to costs.

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