

Kamla Vs. Rati Ram

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Court : Delhi

Decided On : Jan-28-2013

Judge : P.K.Bhasin

Appellant : Kamla

Respondent : Rati Ram

Advocate for Def. : Mr. Manish Kumar

Advocate for Pet/Ap. : Mr. Tarun Garg

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % CRL.M.C. 2263/2010 Date of Decision:

28. h January, 2013 + # ! KAMLAPetitioner Through: Mr. Tarun Garg, Advocate Versus \$ * RATI RAM Respondent Through: Mr. Manish Kumar, Advocate CORAM: HON'BLE MR. JUSTICE P.K.BHASIN ORDER P.K.BHASIN, J: This petition has been filed by the petitioner-wife under Section 482 of the Code of Criminal Procedure, 1973(Cr.P.C.) against the order dated 25th February, 2010 passed by the learned Additional Sessions Judge whereby the order dated 22nd October, 2009 passed by the learned Metropolitan Magistrate in complaint case no. 237/2008 for granting interim maintenance @ ` 4000 to her from the date of filing application for interim maintenance was modified by altering the date of payment to the date of service of the respondent-husband in the main petition

under Section 125 Cr.P.C.

2. The brief facts of the case were noticed by the learned Magistrate in her order as under: 2. The petitioner, wife of the respondent has filed the present petition u/s 125 Cr. P.C. along with application seeking interim maintenance of ` 9,000/- per month.

3. It is stated that parties were married as per Hindu rites and rituals on 22nd July, 1971 at Dadaipur, New Delhi. It is further stated that two daughters and three sons were born out of the said wed lock. Further, the daughters have already got married and one son is residing separately after his marriage and remaining two sons, namely, Akash and Anil are unemployed. It is further stated that since very first day of marriage the behaviour of the respondent was very cruel towards her and did not provide even a single penny for daily needs to her. It is further stated that the respondent used to beat her mercilessly without any rhyme or reason.

4. It is further stated that the respondent is a government employee working in the MCD and earning ` 12,000/- per month as salary and has no other liability except to maintain the petitioner. On the other hand, the petitioner is not working anywhere and totally dependent upon her parents.

3. Accepting the respondents income to be ` 12,000 p.m. the learned Magistrate fixed interim maintenance at ` 4000 p.m. to be payable by the respondent-husband from the date of filing of maintenance application. The revisional Court after noticing the fact that the petitioner-wife had given her incorrect address as also of her husband which had at one stage led to the respondent being proceeded against ex parte and subsequently that fact being noticed by the court itself led to the issuance of fresh notice to the respondent ordered payment of interim maintenance from the date of service of fresh notice upon respondent.

4. Though the petitioner had claimed enhancement of the maintenance amount also in this petition but that relief was given up by her counsel on 16-08-2010. Learned counsel for the petitioner relying upon one judgment of Allahabad High Court reported as 2006 (1) ALJ 37. submitted that interim maintenance was rightly ordered to be given to the petitioner-wife by the Magistrate from the date of filing of

maintenance application. Learned counsel for the respondent supported the revisional Courts order while maintaining that he shall be contesting the petitioners claim regarding his income at the trial of the case.

5. In my view, there is no scope for any interference in the order of the revisional Court since the Magistrate himself had come to the conclusion that the petitioner-wife had not given correct address of her husband and so suo moto ex parte proceedings were recalled and fresh notice was ordered to be sent to him at his correct address as given by the petitioner in her affidavit by way of ex parte evidence. He was then served on 4-5-2009 and from that date interim maintenance was ordered to be paid by the revisional Court though it should have been ordered to be paid from the date of the order dated 22-09-2009 since under Section 125(2) Cr.P.C. interim maintenance can be granted either from the date of the order of the Court or from the date of the application. Since the respondent-husband had not felt aggrieved I am not inclined to interfere and change the date of payment of interim maintenance to the date of order of the maintenance passed by the Magistrate.

6. This petition is, therefore, dismissed. P.K.BHASIN,J January 28, 2013

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