
(2013) 05 AHC CK 0312
In the Allahabad High Court
Case No : Criminal Revision No. 1722 of 2010

Ajay Chaturvedi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(1)

Citation : (2013) 05 AHC CK 0312

Hon'ble Judges : Aditya Nath Mittal, J

Final Decision : Disposed Of

Judgement

Aditya Nath Mittal, J.

Heard learned counsel for the revisionist and learned counsel appearing for opposite party nos.2 to 4.

This criminal revision has been filed against order dated 17.4.2010 passed by Principal Judge, Family Court, Moradabad in Case No.239/9 of 2005 by which the maintenance under Section 125 Cr.P.C. has been granted.

Learned counsel for the revisionist has submitted that the wife was living separately from her husband without any sufficient cause therefore, she was not entitled for any maintenance. The Court below has come to the conclusion that there was no demand of Rs. one lac as additional dowry therefore, there was no justification for living separately from the husband. It has also been submitted that the learned Court below has not assigned any reason for grant of maintenance from the date of application. Therefore, the maintenance should have been awarded from the date of order. It has also been submitted that as per provisions of Section 125 Cr.P.C., the maintenance to wife and the children could not exceed Rs.5000/ as a whole but in the present case the maintenance to opposite parties no.2 to 4 is Rs.10,000/ which is in violation of the provisions of law.

Learned counsel for the opposite parties no.2 to 4 has submitted that learned

Court below has considered all the aspects of the matter and learned Court below was competent to grant maintenance from the date of application and no specific reasons were required to be mentioned. It has also been submitted that at present the salary of revisionist is around Rs.42,000/ per month therefore, the maintenance of Rs.10,000/ cannot be said to be excessive.

An application under Section 125 Cr.P.C. was moved alleging that the applicant no.1 was married to opposite party on 24.11.1997 as per Hindu rites and customs. The opposite party and his family members demanded more dowry from her and upon showing inability to pay the additional dowry, she was ousted from the matrimonial home in August 2004 along with children. It was also alleged that the opposite party was a Reader in a Degree College and he was getting Rs.20,000/ per month as salary and also earning Rs.10,000/ additional. It was also alleged that the applicant was unable to maintain herself therefore, she was entitled for maintenance.

The case was contested by the opposite party and the fact of marriage was admitted. Denying all other allegations of the application, it was mentioned that he had taken all care of his wife but she has left the matrimonial home of her own free will. It was also stated that case under Section 498A IPC and Section of Dowry Prohibition Act was lodged on false grounds. After recording the evidence of the parties, learned Court below came to the conclusion that the applicants are residing separately from opposite party since 2004 and various matrimonial litigations were pending between the parties. Learned Court below after considering the status of the parties has granted maintenance Rs.4000/ per month to the wife and Rs.3000/ per month to minor children till they attained the majority.

Learned counsel for the revisionist has relied upon *Deb Narayan Halder Vs. Smt. Anushree Halder* 2003(47) ACC 897 in which, Hon"ble the Apex Court has held that if the wife has left the matrimonial home without any reason then she has no right of maintenance from her husband.

Learned counsel for the revisionist has further relied upon *Samaydin Vs. State of U.P.* and another 2001(42) ACC 487 and *Anil Kumar Mishra Vs. Smt. Veenu Mishra* and another 2003(47) ACC 145 in which, this Court has held that in normal circumstances the maintenance must be granted from the date of order but in only extraordinary circumstances, it may also be ordered to be paid from the date of application.

Learned counsel for the opposite party has relied upon *Shail Kumari Devi and another Vs. Krishan Bhagwan Pathak alias Kishun B. Pathak* (2008) 9 Supreme Court Case 632 in which Hon"ble the Apex Court has held as under :

"In our considered opinion, the High Court is not right in holding that as a normal rule, the Magistrate should grant maintenance only from the date of the order and not from the date of the application for maintenance. And if he intends to pass such an order, he is required to record reasons in support of such order. As

observed in K. Sivaram, reasons have to be recorded in both the eventualities. The Court was also right in observing that whatever Parliament intended the Court to record special reasons, care had been taken to make such provision by requiring the Court to record such reasons.

Moreover, duration of litigation is not within the power or in the hands of the applicant and entitlement to maintenance should not be left to the uncertain date of disposal of the case. Keeping in view this hard reality, the Court in Savitri held that in absence of prohibition to grant "interim" maintenance such power could be read in the salutary provision of Section 125 of the Code ensuring maintenance to enable the wife to maintain herself during the pendency of proceedings. Even Parliament took into account the reality and by the Amendment Act, 2001 express provision has been made for the purpose.

Again, maintenance is a right which accrues to a wife against her husband the minute the former get married to the latter. It is not only a moral obligation but is also a legal duty cast upon the husband to maintain his wife. Hence, whenever a wife does not stay with her husband and claims maintenance, the only question which the Court is called upon to consider is whether she was justified to live separately from her husband and still claim maintenance for him? If the reply is in the affirmative, she is entitled to claim maintenance. It is, therefore, open to the Magistrate to award maintenance from the date of application and there is nothing which requires recording of "special reasons" though he must record reasons as envisaged by subsection (6) of Section 354 of the Code in support of the order passed by him.

We, therefore, hold that while deciding an application under Section 125 of the Code, a Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such maintenance can be awarded from the date of the order, or, if so ordered, the the date of the application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary. No special reasons, however, are required to be recorded by the Court. In our judgment, no such requirement can be read in subsection (1) of Section 125 of the Code in absence of express provision to that effect."

Learned counsel for the opposite party has further relied upon Smt. Munesh Kumari Vs. Sheo Raj Singh and another 2002 (45) ACC 848 in which, this Court has held that the revisional Court has no jurisdiction to upset the findings and imposed its only findings recorded by learned Magistrate.

It is admitted position that revisionist is the husband of opposite party no.2 and opposite party nos.3 and 4 are their children. It is also admitted that the opposite party nos. 2 to 4 are residing separately since August 2004 and the application for maintenance was moved in the year 2005. The case was contested by the revisionist and both the parties have adduced their evidence. The applicant has been crossexamined at length on the point of residing

separately. The applicant has stated in her statement that she was tortured for additional dowry and was ousted from the matrimonial home and now she is residing with her father who is a retired government servant. She has also stated that she has a danger to her life if she resides with the opposite party. Learned Court below has come to the conclusion that she has been ousted from the matrimonial home after beating her. Learned Court below has also considered the aspect that the matter under Section 498A IPC has resulted in the acquittal by extending benefit of doubt therefore, it cannot be said that she is residing separately from her husband of her own free will. In *Mustafa Shamsuddin Shaikh Vs. Shamshad Begum Mustafa Shaikh and others* 1991 Criminal Law Journal page 1932, it has held as under :

"In proceedings under Section 125 of the Code, it is not necessary for the Court to ascertain as to who was in the wrong and whether the wife was guilty of leaving the matrimonial house without any reason. Even assuming that the wife is in the wrong while leaving the house she cannot be deprived of maintenance when husband contracts second marriage and that fact by itself entitles her to live separately. The proceedings under Section 125 of the Code should not be confused with the matrimonial proceedings between the parties. A right to claim maintenance under the Code is not dependent upon who was right and who was wrong in the matrimonial disputes. The Magistrate is duty bound to award maintenance once it is found that the wife is unable to maintain herself and her husband has means but still neglects or refuses to maintain the wife. The Magistrate is not required to examine whether the conduct of the wife is initially leaving the house was just or not. The conduct of the wife at the time of leaving the house is wholly irrelevant and the Magistrate must concentrate on the facts and circumstances existing on the date of passing order on application filed under Section 125 of the Code."

From the perusal of the evidence on record, it cannot be said that there was absolutely no dispute between the husband and wife. It is true that the revisionist has been acquitted for the offence punishable under Section 498A IPC on the ground of benefit of doubt but for the purposes of Section 125 Cr.P.C., it is not relevant because for an application under Section 125 Cr.P.C., the relationship of the parties, their means and the alleged neglects or refusal for maintenance is to be seen. The applicant has specifically stated in her cross-examination that she does not want to go with the opposite party. As far as the efforts of opposite party to call her wife from her matrimonial home is concerned, it appears that no bona fide attempt has been made to call the wife and the children who were ousted from the matrimonial home in August 2004. The Court below has also made efforts for conciliation between the parties, but they have also failed. From the evidence on record, it cannot be said that the opposite parties no.2 to 4 are residing separately without any sufficient cause. The revisionist has not alleged that during period of separation, he has paid any amount of maintenance to his wife or the children. This also goes to show the mala fides of the revisionist in alleging that he is ready to keep his wife and

children along with him.

Learned Court below has rightly come to the conclusion that the wife and children who are opposite parties no.2 to 4 have been neglected by the revisionist.

As far as submission of learned counsel for the revisionist that no specific reason has been assigned for grant of maintenance from the date of application is concerned, the law relied by the learned counsel for the revisionist in *Samaydin Vs. State of U.P. And another (supra)* and *Anil Kumar Mishra Vs. Smt. Veenu Mishra (supra)* are not good law in view of *Shail Kumari Devi and another Vs. Krishan Bhagwan Pathak (supra)* in which, the Hon'ble the Apex Court has held that for awarding maintenance from the date of application, express order is necessary but no special reasons are required to be recorded by the Court. In the present matter the maintenance application remain pending for almost 5 years and it was not within the power or in the case of the applicant to get speedy disposal of the case. In the evidence it has come that the wife and children do not have any means to maintain themselves and it is also admitted that during pendency of the application under Section 125 Cr.P.C., no interim maintenance was granted by the Court. A human being is required meal every day and he cannot be asked to wait till the disposal of the application. Certainly during period when the maintenance has not been claimed, the Court has no power to grant such maintenance but in the present case an application under Section 125 Cr.P.C. has been moved in the year 2005 which has been decided by order dated 17.4.2010. Therefore, I do not find any illegality in grant of maintenance from the date of application.

Learned counsel for the revisionist has submitted that the amount of maintenance under Section 125 Cr.P.C. cannot exceed Rs.5000/ as a whole. I do not find any substance in the submission of learned counsel for the revisionist because prior to the amendment by Act 50 of 2001, subsection (1) of Section 125 Cr.P.C. provides that upon prove of neglect or refusal, the Court can grant such monthly rate not exceeding Rs.500/ in the whole. The words "not exceeding Rs.500/ in the whole" have been omitted by Section 2 of the Amending Act of 50 of 2001. By the U.P. Amendment, the words Rs.500/ have been substituted by the words Rs.5000/ by U.P. Act 36 of 2000 which has been made effective from 13.8.2001. The State Government has power to amend the Code of Criminal Procedure because it is mentioned in the concurrent list of the 7th schedule of the Constitution. Accordingly, the amount of Rs.500/ has been substituted by the amount of Rs.5000/ by the Amending Act No.36 of 2000 which has come into operation with effect from 13.8.2001 but by the Central Amendment Act 50 of 2001, the words "not exceeding Rs.500/ in the whole" have been omitted. Therefore, the main provisions of Section 125 of the Code of Criminal Procedure do not limit the amount of maintenance in any way. It cannot be said that the State of U.P. by Amending Act No.36 of 2000 has limited the total amount of maintenance to Rs.5000/ only. The effect of U.P. Amendment is that the Court

has power to grant maintenance to each of the person namely wife, Children, father or mother as the case may be, to the extent of Rs.5000/ each independently. In the present case learned Court below has granted Rs.4000/ to the wife and Rs.3000/ each to the children therefore, the said grant of maintenance cannot be said to be violative of the provisions of Section 125 (1) Cr.P.C.

Learned Court below has considered all the aspects in detail and the findings are based on cogent reasons supported by evidence on record. All the necessary requirements of grant of maintenance under Section 125 Cr.P.C. has been proved by the opposite parties nos.2 to 4 in their favour.

I do not find any error of law or perversity in the impugned order. The revision is dismissed and the interim orders dated 28.4.2010 and 7.2.2012 are vacated.

It is made clear that the opposite parties no.2 to 4 are entitled for the arrears of maintenance in accordance with the Judgment and order dated 17.4.2010 passed by Principal Judge, Family Court, Moradabad.

Learned counsel for the revisionist has prayed to grant installments for payment of arrears of maintenance. The 25% of the total arrears be paid within three months from today. Remaining 25% of the total arrears be paid within six months from today and the remaining 50% of the total arrears may be paid within one year from today. It is made clear that in default of payment of arrears as aforesaid, the opposite parties no.2 to 4 shall have the right to recover the whole arrears in accordance with law.