
(2008) 06 MP CK 0016
In the Madhya Pradesh High Court

Anil Kachwaha

APPELLANT

Vs

Smt. Sunita Kachwaha and Others

RESPONDENT

Date of Decision : 26-06-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Hindu Marriage Act, 1955 — Section 9

Citation : (2008) 4 MPHT 193

Hon'ble Judges : R.C. Mishra, J

Bench : Single Bench

Judgement

R.C. Mishra, J.—This revision has been preferred against the maintenance order-dated 29-10-2007 passed by Second Additional Principal Judge, Family Court, Jabalpur in M.J.C. No. 425/2007, requiring the petitioner to pay a monthly sum of Rs. 8000/- (Rs. 3000/- for respondent No. 1 (for brevity "R-1") and Rs. 2500/- each for the respondent Nos. 2 and 3 (for short "R-2 and R-3") as maintenance allowance u/s 125 of the Code of Criminal Procedure.

2. The following facts are not in serious dispute:

(i) On 05-02-1996, the marriage of R-1 was solemnized with the petitioner. In the wedlock, they have been blessed with two daughters viz., R-2 and R-3. The petitioner is presently posted as Executive Engineer in the Public Health and Engineering Department at Kota (Rajasthan). It was on 24-04-2006 that the respondents were brought to Jabalpur from Kota by Mahendra and Jitendra, the brothers of R-1. Since then, they have been residing at her parental home at Jabalpur only. R-1 is Post-Graduate in Geography whereas R-2 and R-3 are the students of Class IV and Nursery respectively. The petitioner has also filed a petition, u/s 9 of the Hindu Marriage Act, 1955 against R-1 for restitution of conjugal rights before the Family Court at Kota.

(ii) On 08-07-2006, the proceedings for grant of a total amount of Rs. 11,000/- (Rs. 5000/- for herself and Rs. 3000/- for each one of the other respondents) as maintenance allowance were initiated by R1. According to her, right from

inception of the marital relationship, she had been subjected to cruelty and dowry harassment not only for bringing insufficient dowry but also due to non-fulfillment of demand for a new car. In this regard, the petitioner picked up a quarrel with her even in the presence of her parents on 22-05-1997 at Kota and, ultimately, with the help of police, she was taken to parental home at Jabalpur where she had to reside with R-2 for a period of 11 months. Thereafter, in the wake of undertaking given by the non-applicant/petitioner that ill-treatment would not continue any further, she was again sent to her matrimonial home. However, there was no improvement in the behavioural pattern and, eventually, his mother asked the brother of R-1 to take her back and send only after a new car was made available. Thus, she was again compelled to live with her parents at Jabalpur for a period of 6 months and upon a fresh assurance given by the petitioner to mend his ways, agreed to return to her matrimonial home where she was again subjected to dowry torture. It was against this backdrop that upon the petitioner's refusal to send her to Jabalpur to see her ailing father, she was left with no option but to leave her matrimonial house with her brothers on 24-04-2006 after informing the police accordingly.

(iii) In reply, the petitioner specifically denied the allegations as to cruelty and dowry harassment. Attention was also invited to the fact that no complaint regarding alleged ill-treatment on account of dowry demand was made at an earlier occasion. As per his version, R-1 used to misbehave with his parents; give threats to get them detained in prison and one of the incidents of quarrel attributable to her had resulted into death of his father. According to him, R-1 had left matrimonial home because of incompatibility with his mother, who is presently aged about 72 years, whereas being the only son, he is under a moral obligation to take care of her.

3. Both the wife and the husband preferred to prove the respective pleadings by entering into witness box and producing the relevant documents. However, one of the documents, marked as Exh. P-2, was the subject-matter of objection raised during chief-examination of R-1 on the ground that no reason was assigned for not filing the same at an earlier stage. The document is in the form of the carbon copy of the report said to have been submitted by R-1 on 24-04-2006 before SHO, P.S. Mahaveer Nagar, Kota. Its authenticity has been questioned in the light of the recitals of the report entered at Sl. No. 1697 on the same day in the Rojnamcha. It is relevant to note that Rojnamcha report, copy of which is placed on record as Exh. D-4, does not contain any reference to the dowry harassment. On the contrary, it was categorically mentioned therein that, in the wake of husband's refusal to permit her to look after her ailing father, the wife was compelled to leave his house.

4. On these facts, even assuming that the original of the document (Exh. P-2) was presented before the SHO, it happened to be the first report regarding alleged dowry harassment during a considerable span of 11 years of the marital life.

5. Learned Counsel for the petitioner, while inviting attention to the decision of the Allahabad High Court in *Smt. Saroj Devi v. Krishna Murari Tewari* 1980 All.LJ 447, has strenuously contended that the conduct of not informing the police about the ill-treatment or dowry torture meted out to R-1 was not unusual or unnatural. However, the fact of the matter is that the grievance against cruel treatment in the matrimonial home was not projected at any earlier point of time in any other manner or form whatsoever. Moreover, the contents of the letters (Exhs. D-1, D-2 and D-3), written by R-1 to her father, husband and parents-in-law respectively at different occasions, clearly suggested that the alleged agreed for dowry was not the cause of disharmony in the marital relationship. This apart, no evidence was led to establish the nature and illness of R-1's father and the circumstances preceding her leaving of matrimonial home on 24-04-2006 despite the fact that the same could be duly proved by examining her brothers namely Mahendra and Jitendra.

The petitioner, in his sworn testimony, has clearly refuted the allegations as to dowry harassment. According to him, R-1 used to ill-treat his mother who is totally dependent on him only. In Para 23 of her cross-examination, R-1 also candidly admitted that the best period of her marital life was spent at Ratangarh where she had the occasion to live with her husband and daughters only.

6. As cautioned by the Apex Court in *Rajathi Vs. C. Ganesan*, , it is not necessary to examine the entire evidence threadbare in a case u/s 125 of the Code as only a prima facie view of the matter is taken. Therefore, it would not be desirable to enter into the minutest details of the matrimonial dispute, particularly when the petition for restitution of conjugal rights is pending before the competent Court. However, in the light of the evidence brought on record, the finding that a separate stay of the wife was justified due to alleged dowry torture is, on the face of it, apparently illegal or perverse. Accordingly, R-1 is not entitled to claim maintenance in view of the fact that she had left her matrimonial home without any justifiable ground (*Deb Narayan Halder Vs. Smt. Anushree Halder*, referred to). Nevertheless, this finding is not sufficient to disentitle her from claiming maintenance for the minor children viz., R-2 and R-3 as their custody is immaterial for determining the statutory liability of the father. The corresponding quantum of maintenance can also not be termed as excessive in the light of social background and standard of living of the parties.

7. In the result, the revision is partly allowed. The impugned order of maintenance so far as it relates to R-1 namely *Smt. Sunita Kachwaha* is set aside whereas the remaining part of the order concerning R-2 and R-3 viz., *Ku. Ankita Kachwaha* and *Ku. Akshita Kachwaha* respectively is hereby affirmed.

Revision partly allowed.