
(2019) 04 UK CK 0055
In the Uttarakhand High Court
Case No : Criminal Revision No. 156 Of 2017

Anita Dabral

APPELLANT

Vs

Pramod Dabral

RESPONDENT

Date of Decision : 09-04-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125

Citation : (2019) 04 UK CK 0055

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : Mohindar Singh Bisht

Final Decision : Allowed

Judgement

Lok Pal Singh, J

1) Criminal revision is directed against the judgment and order dated 24.03.2017, passed by Addl. Judge, Family Court, Rishikesh, District Dehradun, in Misc. Case no. 50 of 2015, Smt. Anita Dabral vs Pramod Dabral, whereby the application filed by the revisionist-wife under Section 125 of Cr.P.C. was dismissed by the said court.

2) Heard Mr. Mohinder Singh Bisht, learned counsel for the revisionist and perused the material available on record.

3) Brief facts of the case are that the revisionist-wife filed an application under Section 125 of Cr.P.C. before Addl. Judge, Family Court, Rishikesh, seeking maintenance from the respondent-husband on the ground that marriage between the parties was solemnized on 02.10.2006, as per Hindu rites and rituals, and handsome dowry was given by the parents of the revisionist. After the marriage, the respondent-husband started harassing the revisionist-wife for non-fulfillment of demand of dowry and did not take care of her and even failed to maintain her. It is also stated in the application under Section 125 of Cr.P.C. that the revisionist is dependent on her widowed mother, who lives in village, and has no source of

income to maintain herself.

4) Respondent-husband filed his written statement stating therein that the revisionist-wife is not unemployed; rather she opened a shop of Ayurveda Panchkarma Therapy and Massage. The said shop is in the name of the revisionist, duly registered with the Department of Labour, and she is earning Rs.15,000/- to Rs.20,000/- per month. In this regard, the respondent filed documentary evidence, viz. visiting card of revisionist-wife, photocopy of papers of the shop, registration certificate granted by Labour Department before the court below.

5) It is contended by the revisionist-wife in the application filed under Section 125 of Cr.P.C. that the respondent-husband is running a motor workshop. Earlier, the respondent-husband was having a truck and he was earning a handsome income from it. It is also contended that since the revisionist-wife is unable to maintain herself, therefore, the respondent-husband be directed to pay interim maintenance to her.

6) Learned Judge, Family Court has considered the respective pleadings of the parties and on the basis of photocopies of documents filed by the respondent-husband showing that there is a shop of Ayurvedic Panchkarma Therapy and Massage centre, which is registered with the Labour Department, in the name of the revisionist-wife, dismissed the interim maintenance application filed by the revisionist-wife on the ground that she has not rebutted such averments and had concealed the material facts from the court below.

7) Learned counsel for the revisionist would submit that the shop in question was opened, but there was no earning from the said shop and spa center has been opened in a tin shed (chappar), but the court below did not consider this aspect of the matter and committed illegality in rejecting her application filed under Section 125 of Cr.P.C.

8) As per the case of the respondent-husband, he is not running a motor workshop. Rather, he is a mechanic and is earning Rs.1500 - 2000 per month. The statement of the respondent-husband that he is somehow earning Rs. 50-100 by doing mechanic work per day is unbelievable. It appears that the respondent-husband has not disclosed his correct income before the court below.

9) Learned court below has committed illegality in not recording any finding as to whether the revisionist-wife is able to maintain herself or not and had erred in law in rejecting the interim maintenance application and in holding that she has concealed the fact that she is running an Ayurvedic therapy massage center. Since the learned court below has not considered the merit of the case whereof it is the duty of the respondent-husband to maintain his wife. In the absence of any finding recorded by the court below in this regard that the revisionist-wife has sufficient means to maintain herself, the application for interim maintenance ought not to have been rejected on this ground alone that the revisionist has not disclosed that she is running such spa center.

10) It is settled position in law that it is the duty of the husband to maintain his wife and children, but the learned court below has also failed to consider said fact.

11) Having considered the fact that the respondent-husband is a motor mechanic, from a liberal estimate, it can safely be presumed that he must be earning Rs.500/- per day. As such, his monthly income is estimated at Rs. 15,000/-per month.

12) In view of the above, the criminal revision is allowed. It is directed that the respondent-husband shall pay an amount of Rs.5,000/- per month to the revisionist-wife, as interim maintenance, from the date of filing of application before the court below. Arrears shall be paid by the respondent-husband to the revisionist-wife within a period of six months from today. The amount of interim maintenance, as directed by this Court, shall be paid by the respondent-husband to the revisionist-wife by 10th of every month. No order as to costs.

13) Lower court record be sent back to the court below forthwith.