

(2001) 02 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition No"s. 5981 to 5986 of 1999 (Edn.)

Basavaraj M. and others

APPELLANT

Vs

The Karnataka State Pharmacy Council, Bangalore and others

RESPONDENT

Date of Decision : 05-02-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Pharmacy Act, 1948 — Section 12

Citation : AIR 2001 Kar 239 : (2001) 3 KCCR 1720

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : Sri R.H. Chandanagoudar, for the Appellant; Sri Bharama Gowda, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—Heard Mr. Shivakumar Kallur, learned Counsel for the revision petitioner.

2. This revision petition is directed against the judgment and order dated 25.6.1999 whereby the Family Court Judge at Raichur, had allowed the petition u/s 125 of the Code of Criminal Procedure filed by the respondents 1 to 3. The present respondents 1 to 3 are. the wife and two minor children (namely 2nd respondent is the daughter and the 3rd respondent is the son) of the revision petitioner. According to the applicant, present revision petitioner and respondent No. 1 were legally married according to the customs prevailing in their community 16 years ago and that from their wedlock, two children were born. According to the respondent No. 1, the relationship between her and her husband got deteriorated as the husband developed bad habits and started ill-treating wife and, ultimately, the husband/revision petitioner threw the wife and children out of his house. According to the case of the present respondent No. 1 i.e., the wife, the husband revision petitioner was addicted to the habits of gambling, drinking and womanizing and the wife and children were neglected. On

being thrown out of the house, respondent No. I/wife filed an application for maintenance claiming maintenance to the tune of Rs. 500.00 each namely Rs. 500.00 for herself and Rs. 500.00 each for two children. The Family Court, after considering all the materials on record, found that the petitioner i.e., the present respondent No. 1 has been the legally wedded wife of the present revision petitioner and the present respondents 2 and 3, who were the petitioners in the maintenance petition, were the children born out of the lawful wedlock of the revision petitioner and the respondent No. 1 before this Court. The Court below further found that the husband was deliberately refusing to maintain his wife and the children. The Court below observed that the respondent/ present revision petitioner had made bald allegations of unchastity against the wife by denying the paternity of the children. This cannot be said to be anything else than cruelty and this could certainly be the ground for the wife and the children to claim the maintenance while living separately even.

2A. In this view of the matter, in my opinion, the Trial Court cannot be said to have acted illegally in awarding the maintenance.

3. The learned Counsel for the revision petitioner contended that under law, the limit for grant of the maintenance is only Rs. 500.00 and not more. He submitted that the maintenance, in total, was awarded to the tune of Rs. 1,500.00 and the Court below acted illegally in awarding the same. The limit being Rs. 500.00, maintenance could not be awarded more than Rs. 500.00.

4. In my opinion, the contention of the learned Counsel for the revision petitioner is based in misconception. Section 125(1) reads as under :

"125. Order for the maintenance of wives", children and parents :

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the First Class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time-to-time direct :

Provided that the Magistrate may order the father of a minor female child referred to in Clause (b) to make such allowance, until she attains her majority, if

the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

Explanation-For the purposes of this Chapter-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (19 of 1875) is deemed not to have attained his majority;

(b) "wife" includes woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried."

5. A reading of the section per se reveals the limit of Rs. 500.00, that the maintenance shall not be exceeded Rs. 500.00. Here the Court below has granted maintenance of Rs. 500.00 each to each individual separately for living, clothing, etc., as maintenance to the wife can be granted to the extent of Rs. 500.00. Similarly if the child claims maintenance, he is also entitled to the maintenance of Rs. 500.00 in his own right and not beyond that. If the father and mother are included, they are also entitled to Rs. 500.00 each. The expression "in whole in the context means taking all items of maintenance together and not all the dependents nor all members of family by putting together. Thus contention of the learned Counsel for the revision petitioner that amount of Rs. 500.00 can only be granted as maintenance to all the persons together is wrong and without substance. When I so hold, I find support for my above view from the decision of Hon'ble Supreme Court in the case of Captain Ramesh Chander Kaushal Vs. Mrs. Veena Kaushal and Others, .

6. That the award of Rs. 500.00 per month to each of the claimants i.e. wife and two children is, looking to the present hard days, not excessive and in this case it has been found that the revision petition is employed in Hutti Gold Mines and drawing the monthly salary of Rs. 5,000.00 per month. In this context, in my opinion, award of maintenance for each claimant at the rate of Rs. 500.00 cannot be said to be illegal or excessive.

The revision petition has got no merits and, as such, it is hereby dismissed.