
(2006) 12 AHC CK 0166
In the Allahabad High Court

Chandra Shekhar Tripathi

APPELLANT

Vs

State of U.P. and Smt. Nishi Tripathi

RESPONDENT

Date of Decision : 08-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2006) 12 AHC CK 0166

Hon'ble Judges : V.D. Chaturvedi, J

Bench : Single Bench

Judgement

V.D. Chaturvedi, J.—This revision is directed against the judgment and order dated 28.6.2005 passed by Sri R.P. Misra, Addl. Principal Judge, Family Court, Kanpur Nagar, in Case No. 21 of 2005, (Nishi Tripathi v. Chandra Shekhar Tripathi) whereby he has allowed the petition moved u/s 125 Cr.P.C. and has awarded the maintenance allowance to respondent No. 2 (Smt. Nishi Tripathi) at the rate of Rs. 2000/- per month payable by the revisionist. Hence this revision.

2. The material facts giving rise to this revision are that Smt. Nishi Tripathi (respondent No. 2) filed a petition u/s 125 Cr.P.C. against Chandra Shekhar Tripathi (revisionist) stating therein that her marriage with Chandra Shekhar Tripathi was held on 26.1.2000 according to Hindu rites and rituals; that after her marriage, Chandra Shekhar Tripathi and his family members demanded a cash of Rs. 50,000/- and a motor cycle in dowry; that they retained her ornaments and sent her to her paternal house; that when she went again to her in-laws' house along with her father, she was ill treated and misbehaved by Chandra Shekhar Tripathi and other members of his family; that on 12.5.2002 he (Chandra Shekhar Tripathi) had beaten her and turned her out of his house; that since then she was residing at her paternal house; that she had no means to maintain herself and that her husband was earning Rs. 10,000/- per month as he was an Accountant and Law Advisor in several renowned business firms; that his father retired after holding a high post in Birla factory and was getting pension. She prayed for a maintenance allowance of Rs. 5,000/- per month and also

prayed for a lump sum amount of Rs. 10,000/-.

3. The revisionist in his reply (in court below) admitted his marriage with Nishi Tripathi but denied the allegation of demand of dowry. He stated that Smt. Nishi Tripathi went, on her own accord, to her paternal house with her father and uncle; that the revisionist was always ready and willing to keep her with him; that Nishi Tripathi had passed Computer Course and knew short hand writing and was serving in a business company at Kanpur; that she was not willing to live with him; that the pension of his father was only Rs. 648/- per month; that it was Nishi Tripathi, who had deserted him; that although he was M.A., L.L.B but he was not earning .

4. After receiving the affidavits and after receiving the evidence of both the parties, the learned trial court awarded the maintenance allowance at the above mentioned rate from the date of the petition.

5. I have heard Sri K.K. Srivastava, learned Counsel for the revisionist and Sri Nand Lal Maurya, learned Counsel for respondent No. 2 and have also perused the record of the case.

6. The learned Counsel for Revisionist contended that there was ample evidence that Smt. Nishi Tripathi was earning Rs. 3000/- per month from her service in Gopal Sales Corporation Kahukothi, Kanpur; that the evidence was not enough to hold that the revisionist was earning any amount more than Rs. 800/- per month; that the revisionist was ready and willing to keep respondent No. 2 with him.

7. Regarding the income of respondent No. 2 the learned trial judge found that the evidence produced by the revisionist was not convincing.

8. The revisionist's witness Satish Kumar Agnihotri stated that Nishi Tripathi was found working in Gopal Cloth Agency Kahukothi, Kanpur when he visited the said agency. This witness could not tell the type of business carried on by said Gopal Cloth Agency. Moreover, the witness was related to revisionist. Hence the trial Judge did not rely upon his evidence. Witness Ramesh Chandra Tripathi is the father of the revisionist. His statement regarding the service and income of Smt. Nishi Tripathi was based upon the informations received from his relatives. Thus the evidence of Ramesh Chandra Tripathi was the hearsay evidence and no decision could be based upon such evidence.

9. The relief of maintenance allowance was provided by the Legislature to those classes of persons who were considered unable to maintain themselves. The majority of women in our country are still wholly dependents upon their husbands. When such women are deserted by their husbands, they run into rough weather and they fall in the need of immediate relief to maintain themselves. It is with this aim and object that Section 125 Cr.P.C. is enacted. Therefore, a heavy responsibility lies upon the husband to prove by the best available evidence that his wife was not unable to maintain herself. The

revisionist could have discharged this responsibility by producing and proving any document of the employer firm showing her (respondent No. 2) as an employee of the firm and also her monthly salary or by producing any such co-employee whose duty was to maintain the record of her salary or by any other evidence of alike nature. But the revisionist could not produce any such evidence. A bare statement of the relative of the revisionist that he saw Smt. Nishi Tripathi working in the firm was not sufficient to prove that she was capable of maintaining herself. The evidence of the revisionist's father that he heard that Smt Nishi Tripathi was serving in the firm was not sufficient to hold that she was in service. The learned trial judge committed no error in holding that Smt. Nishi Tripathi was unable to maintain herself. His finding on this point warrants no interference.

10. The revisionist admitted that he was holding the degrees of M.Com. M.A. and LL.B. but asserted that he was not practicing. He stated that he was an accountant in Ajay Sonkar Company but was earning only Rs. 800/- per month; that he had a telephone at his house and used to pay its bill at the rate of Rs. 150/- per month; that he had a Fridge, Scooter, T.V. and computer but added that these were owned by his father. He also admitted that his father was the owner of the Gayatri Medical Store and some land in the village. The revisionist's evidence showed that his family was financially sound. His educational qualification was M.Com. M.A. and LL.B. which was also in the tune with his standard of living in which he was leading his life. The learned trial Judge was justified in holding that the income of the revisionist was Rs. 5000/- per month.

11. Husband is bound to maintain his wife with the same standard in which he is living. The presumption is also that a husband is capable of maintaining his wife with the same standard of living in which the husband himself is living.

12. The revisionist stated in court below that he was ready and willing to keep his wife with him. The mere expression (sans efforts) of the readiness and willingness to keep the wife with him is not sufficient to absolve the husband of his responsibility to maintain his wife. In order to convince the court on this issue it was incumbent upon the revisionist to adduced evidence regarding his efforts made in this behalf. Such efforts must be to the extent that the court may feel convinced that the husband has exhausted all of his efforts to keep his wife with him. A mere statement that he was ready and willing to keep his wife with him was nothing but a baseless defence plea asserted on the legal advice to escape from the responsibility to maintain his wife. The revisionist did not adduce any evidence regarding such efforts. Hence his plea of readiness and willingness is rejected.

13. In my opinion the maintenance @ Rs. 1500/- per month instead of Rs. 2000/- per month would be an adequate amount of maintenance.

14. The revision is, therefore, partly allowed, reducing the maintenance allowance from Rs. 2000/- per month to Rs. 1500/- per month. This rate of

maintenance allowance would be payable by the revisionist to respondent No. 2 from the date as ordered in the impugned Judgment.

15. Certify the judgment to the court below.