
(1995) 11 AP CK 0003

In the Andhra Pradesh High Court

Case No : Criminal R.C. No"s. 528 and 529 of 1994

J. Adinarayana

APPELLANT

Vs

J. Appalanarasamma and Another

RESPONDENT

Date of Decision : 06-11-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(4), 127(5)

Citation : (1996) 1 ALD(Cri) 887 : (1996) 1 ALT(Cri) 352 : (1996) 2 DMC 447

Hon'ble Judges : V. Rajagopala Reddy, J

Bench : Single Bench

Advocate : S. Udayachala Rao and S. Lavanya Lakshmi, for the Appellant; K. Subrahmanyam and Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

V. Rajagopala Reddy, J.—The petitioner is the husband of the 1st respondent and is common in both the matters. 1st respondent filed M.C. No. 3 of 1982 on the file of the Judicial Magistrate of First Class, Narasannapeta for grant of maintenance and the Court granted Rs. 75/-p.m. towards past maintenance and Rs. 150/- p.m. towards future maintenance. It is stated that subsequent to the order of the Magistrate granting maintenance, the parties lived together and resumed cohabitation and also begot one child. However, subsequently the wife left the petitioner to elope with one U. Ramarao and started living adulterous life. Consequently the petitioner filed Crl. M.P. No. 912 of 1993 to cancel the maintenance granted in M.C.No.3/82. As a counter-blast, it is stated, the wife filed M.C. No. 10 of 1993 for enhancement of the maintenance in M.C.No. 3 of 1982. The Court below dismissed the Crl. M.P. 912/93 filed by the petitioner-husband and allowed M.C.No. 10 of 1993 enhancing the maintenance to Rs. 250/- p.m. Criminal Revision Case No. 528 of 1994 has been filed against the order in M.P. No. 912/93 in M.C. No. 3/82 and Crl. R.C. No. 529 of 1994 has been filed against the order in M.C. No. 10 of 1993. Since common question arises in both the matters, they are disposed of by this common order.

2. It is contended by the Counsel for the petitioner that since the 1st respondent had resumed cohabitation and started living with the petitioner 1 which amounts to waiver of the claim of maintenance granted in M.C.No.3/1982, the Court could not have granted the enhancement. Secondly it is contended that living in adulterous life by the 1st respondent would disentitle her for the claim of maintenance and the maintenance already granted should have been cancelled.

3. The Court below considered the evidence of P.Ws. 2 and 3, who are the residents of the village of U. Ramarao and the Court was not prepared to accept their evidence to hold that the 1st respondent was living in adulterous life with U. Ramarao. It was found that the entire evidence on record only made out a sketchy outline of relationship between the 1st respondent and U. Ramarao and it did not establish any illicit relationship between them. In view of the above finding reached by the Court below from proper inference and appreciation of the evidence on record, I cannot interfere with the finding reached by the Court below and hold that the 1st respondent was leading an adulterous life with U. Ramarao.

4. In support of the contention that the 1st respondent was not entitled for maintenance in view of resumption of cohabitation with the petitioner, the learned Counsel for the petitioner cited *Bussa Anasuya v. Bussa Rajaiah* AIR 1991AP 296, where it was held :

"In either event, once cohabitation is resumed there is a waiver on the part of the wife of the cause of action on which the suit and the decree was founded. Whatever might be the ground on which the decree has been obtained, the same result follows, if subsequent to the decree there is resumption of cohabitation."

The said case arose in dealing with a situation where a decree for maintenance was obtained by a Hindu wife against her husband and subsequent thereto she reunited with the husband without executing the decree.

5. In this case we are dealing with maintenance granted u/s 125, Cr.P.C. Considerations for grant of maintenance and the nature of decree passed by the Civil Court may not be entirely apposite for the maintenance granted u/s 125, Cr.P.C. Section 125, Cr.P.C. is exhaustive and is self-contained. Under Sub-section (4) of Section 125 Cr.P.C. and Sub-section (5) of Section 127, Cr.P.C, no plea of resumption of cohabitation between the parties can be entertained as a valid defence for the discontinuance of maintenance. In *Bhupinder Singh Vs. Daljit Kaur*, , it has been held by the Apex Court that:

"An order u/s 125, Cr.P.C. will operate until vacated or altered in terms of the provisions of the Code. Until the said order is modified or cancelled by the Higher Court or is vacated under Sub-section (4) of Section 125 or under Sub-section (7) of Section 127 of the Code its validity survives and no plea that there has been cohabitation in the interregnum or that there has been compromise between the parties can hold good as a valid defence."

In view of the authoritative decision of the Supreme Court, the contention raised by the petitioner that the respondent is disentitled for maintenance by virtue of resumption of cohabitation with the petitioner has to be held as devoid of merits.

6. It is next contended by the Counsel for the petitioner that the 1st respondent has admitted in Crl. R.C. No. 529 of 1994 that there was a post-decretal arrangement that the petitioner shall pay Rs. 80/- p.m. in cash and provide separate residence and give her 1/3 of the produce and as such she is not entitled for the grant of maintenance by the Court. As stated by the Supreme Court, compromise or arrangement between the parties, cannot be a valid ground for discontinuance of maintenance. As I have stated earlier unless the order of maintenance is varied as contemplated under Sub-section (4) of Section 125, Cr.P.C. by a subsequent valid order, the earlier order of maintenance survives. Since the maintenance granted to the 1st respondent has been enhanced to Rs. 250/-p.m. in M.C. No. 10/93, the 1st respondent is entitled for the enhanced maintenance. For the aforesaid reasons the Crl. Revision Cases are dismissed. Crl. Revn. dismissed.