

(1991) 05 AHC CK 0033
In the Allahabad High Court
Case No : Criminal R. No. 401 of 1989

Preetpal Singh

APPELLANT

Vs

Ishwari Devi and Others

RESPONDENT

Date of Decision : 06-05-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 397(3)
Guardians and Wards Act, 1890 — Section 25

Citation : (1991) 2 AWC 468 : (1991) CriLJ 3015 : (1991) 2 DMC 460 : (1992) 1 RCR(Criminal) 206

Hon'ble Judges : S.R. Bhargava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.R. Bhargava, J.—This Criminal Revision has come up in peculiar circumstances.

2. Opposite party No. 2 Mahendra Singh and opposite party No. 1 Smt. Ishwari Devi are husband and wife. They are blessed with sons Yashpal and revisionist Preet Pal Singh. Wife Smt. Ishwari Devi filed an application u/s 125 Cr.P.C. against her husband claiming maintenance for herself and her minor sons. She attributed unfaithfulness to her husband, who has illicit relation with one Smt. Kaushal. She further alleged that despite means that is salary income of Rs. 2500/- per month and annual income from 50 bighas of land, her husband has been neglecting her and her children. Husband resisted the application and denied the allegations of the wife. He alleged that the wife is employed and is getting Rs. 1000/- per month. But there was break in service. He denied that the children lived with her. He pointed out that in divorce petition, he is paying Rs. 300/- per month to the wife.

3. Learned Magistrate held that husband has sufficient means namely basic pay of Rs. 1200/- and income from 50 bighas of land; that the wife has been unable to maintain herself from January, 1987; that the husband has been cruel with wife and has been making false allegations against her character; that the

husband has kept another women, that the wife has sufficient cause for separate living; that one of the son's is living with the husband whom the husband is maintaining himself, but the other son is with the wife. With these findings Magistrate awarded maintenance of Rs. 500/- per month to the wife and Rs. 500/- to the son living with the wife till he attains maturity.

4. Against this, husband filed revision. During the pendency of the revision, he filed an application that the son has come to him and so the wife cannot get maintenance for him. Learned lower revisional Court confirmed the findings of the Magistrate. The son appeared before Revisional Court and said that for the last 3-4 months, he has been with his father. The lower revisional Court held that the father was not given custody of the minor by any Court, It observed that since the minor came to the later he has not been receiving education. Father brought the son only to defeat the order of the Magistrate. With these findings the learned revisional Court dismissed the revision. Then the present revision was filed in the name of the minor Preet Pal Singh through his uncle Braham Singh. In this revision, it was reiterated that the minor has been living with his father. In the revision orders of the Magistrate as well as the lower revisional Court were challenged.

5. I have heard the parties Counsel and has already observed, it is a peculiar second revision brought by an ingenious device. Father lost his first revision and then he himself could not file the second revision u/s 397(3) Cr.P.C. Hence this ingenious device was sought. I am afraid that the ingenious device cannot be permitted. Both the Magistrate and the lower revisional Court did not pass any order against the revisionist from which revisionist could have been aggrieved. Whatever orders the Magistrate and the lower revisional Court passed were against the father. I hold that the son having no order against him, cannot maintain revision.

6. Secondly once an order for maintenance is passed in favour of an minor on change of circumstances that order can be annulled or altered only u/s 127 Cr.P.C. when an application u/s 127 Cr.P.C. is made for altering or annulling an order. Magistrate can make elaborate inquiry and then only an appropriate order for annulment or alteration can be passed. It is no doubt true that u/s 6 of the Hindu Minority and Guardianship Act, father is a natural guardian for his minor son. But once minor is in custody of the mother the father cannot take away the minor from the guardianship of the mother except by proper application u/s 25 of the Guardian and Wards Act. It should not be forgotten that in granting custody the Court exercising parental jurisdiction has to look after the welfare of the minor. It is only in proper proceedings u/s 25 of the Guardian and Wards Act that welfare of the minor can be determined. I hold that since the custody of the minor had not been changed according to law, no relief could be given to the father.

7. In result, this revision has no force and is hereby dismissed.