

(2002) 08 AHC CK 0209
In the Allahabad High Court
Case No : Crimianl Revision No. 686 of 1984

Smt. Munesh Kumari

APPELLANT

Vs

Shri Sheo Raj Singh and Another

RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2003) 2 ALD(Cri) 15 : (2003) 1 ALT(Cri) 2 : (2003) CriLJ 215 :
(2003) 1 DMC 137 : (2003) 1 RCR(Criminal) 161

Hon'ble Judges : M.A. Khan, J

Bench : Single Bench

Advocate : Keshav Sahai, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

M.A. Khan, J.—This is revision against the judgment and order dated 13-12-1983 passed by the learned VI Additional Sessions Judge, Aligarh in Criminal Revision No. 295 of 1983, thereby upsetting the judgment and order dated 14-4-1983 passed by the learned Special Judicial Magistrate, Aligarh under which a petition u/s 125, Cr. P. C, moved by the wife against her husband was allowed and the wife was granted maintenance to the tune of Rs. 100/- per month. In revision the learned Additional Sessions Judge reverse the finding and dismissed the petition u/s 125, Cr. P. C. moved by the wife. For setting aside the aforesaid judgment and order, the present revision has been filed.

2. None appears for the parties and I have myself gone through the impugned judgment and order passed by the learned Additional Sessions Judge and I find that it is absolutely illegal and improper.

3. In case of Mustafa Shamsuddin Shaikh v. Shamshad Begum Mustafa Shaikh, 1991 Criminal Law Journal 1932, in which it has been held as follows :

"In proceedings u/s 125 of the Code, it is not necessary for the Court to ascertain as to who was in the wrong and whether the wife was guilty of leaving

the matrimonial house without any reason. Even assuming that the wife is in the wrong while leaving the house she cannot be deprived of maintenance when husband contracts second marriage and that fact by itself entitles her to live separately. The proceedings u/s 125 of the Code should not be confused with the matrimonial proceedings between the parties. A right to claim maintenance under the Code is not dependant upon who was right and who was wrong in the matrimonial disputes. The Magistrate is duty bound to award maintenance once it is found that the wife is unable to maintain herself and her husband has means but still neglects or refuses to maintain the wife. The Magistrate is not required to examine whether the conduct of the wife in initially leaving the house was just or not. The conduct of the wife at the time of leaving the house is wholly irreverent and the Magistrate must concentrate on the facts and circumstances existing on the date of passing order on application filed u/s 125 of the Code."

4. Similar view has been taken in case of *Gangabai v. Shriram alias Shrikishan*, 1991 Criminal Law Journal 2018, in which it has been held that the wife is entitled to maintenance despite the fact that she was living separately from the husband.

5. In case of *Mst. Ansuiya Bai v. Nawaslal*, 1991 Criminal Law Journal 2959, it has been held that if there is any assertion by wife that she is not doing anything that is sufficient to attract the provisions of Section 125, Cr. P. C.

6. In case of *Ganga Prasad v. State of U. P.*, it has been held that the revisional Court should not draw his own conclusion when there is no illegality in the order of the Magistrate.

7. In case of *Akhilak Ahmad v. Vahid Ali Ansari*, 1987 ACC 544 : 1988 All LJ 93 it has been held that once there is a finding of fact recorded by the Magistrate, the revisional Court has no jurisdiction to upset that finding.

8. In case of *Smt. Sheela Devi v. Munna Lal* 2000 (41) ACC 158 it has been held that revisional Court committed illegality in substituting its own finding and opinion while refusing maintenance to wife and the revisional Court has no jurisdiction to set aside the finding of the learned Magistrate and impose its own finding.

9. The Hon"ble Supreme Court in case of *Associated Cement Co. Ltd. Vs. Keshvanand*, also held that while the appellate jurisdiction is co-extensive with original Court's jurisdiction as for appraisal and reappraisal of evidence, the Court has simply to confine to the legality and propriety of the findings and as to whether the subordinate Court acted within its jurisdiction.

10. In the present case, there is a positive finding of fact that the husband has failed to maintain the wife and neglected her. Therefore, the order of maintenance was passed. The revisional Court had absolutely no jurisdiction to upset that finding and impose its own finding over the finding recorded by the learned Magistrate. The revisional Court has thus acted with a jurisdiction not

vested in it and as such committed illegality in upsetting the finding recorded by the learned Magistrate.

11. The revision is accordingly allowed. The impugned judgment and order dated 13-12-83 passed by the learned Additional Sessions Judge, Aligarh are set aside and the order dated 14-4-83, passed by the learned Special Judicial Magistrate, Aligarh is confirmed.