

(1994) 11 AHC CK 0104
In the Allahabad High Court
Case No : Criminal Revision No. 962 of 1994

Sri Kalka

APPELLANT

Vs

Family Court and Others

RESPONDENT

Date of Decision : 24-11-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (1995) 2 DMC 100

Hon'ble Judges : N.B. Asthana, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.B. Asthana, J.—Smt. Bhaggo Opposite Party No. 2 filed an application u/s 125 Cr. P.C. claiming maintenance allowance for herself and her minor son Manoj Opposite Party No. 3 stating in brief that she is the legally wedded wife of the revisionist. They were married about 26 years back. She lived with him for about 12 years and performed her marital obligations as a result of which Manoj was born. About 8 years back her husband turned her and their son out of the house after depriving her of the ornaments and clothes, Since then she is residing with her father. It was said that it has become difficult for her father to maintain her and their son due to financial stringency and therefore, she was obliged to file application for maintenance. She claimed Rs. 1000/- as maintenance allowance for her and their son stating that the revisionist has about 3 acres of land and is earning about Rs. 30,000/- per annum. He is also dealing in milk and is earning about Rs. 1500/- per month. It was also alleged that the revisionist is under the influence of the wife of his cousin and for that reason she was turned out of the house.

2. The revisionist contested this application. He did not dispute that Smt. Bhaggo is his legally wedded wife and Manoj their son. According to him Opposite Parties Nos. 2 and 3 went from his house only about five months back and then did not return. He denied the allegations of cruelty made in the application stating that

she had gone with all her ornaments but it appears that these ornaments were disposed of by her parents. He expressed his willingness to keep her with him stating that the allegations made against the wife of his cousin are wrong and that he has only two bighas of land and is not in a position to pay her maintenance allowance as claimed by her. Upon a consideration of the evidence adduced in the case the Judge, Family Court, came to the conclusion that on account of ill-treatment and cruelty of the revisionist his wife and son are living separately and that he is in a position to pay the maintenance allowance. Accordingly Rs. 500/- per month was fixed as maintenance allowance. Aggrieved by. it the husband has come to this Court in revision.

3. I have heard learned Counsel for the revisionist and have perused the record. None appeared on behalf of the Opposite Parties Nos. 2 and 3 to contest the revision. The first point urged is that the revisionist did not treat his wife cruelly as alleged in the application nor he is under the influence of the wife of his cousin and that the Opposite Party No. 2 left the house out of her own will and, therefore, is not entitled to get any maintenance allowance. In the context it was also argued that he is willing to bring back his wife and also served notice upon her to come back and live with him but she did not listen and for that reason he had to file a suit, for restoration of conjugal rights, which is still pending.

4. No reason is, however, forthcoming as to why the Opposite Party No. 2 would leave the house of the revisionist with their son. It is no doubt correct that in her statement Opposite Party No. 2 gave out that there was nothing suspicious regarding the revisionist's relations with the wife of his cousin. But that alone would not lead to the conclusion that she left the house of her husband without any reason. In the normal course a wife would like to live with her husband and would not like to remain dependent upon her father after marriage. There is oath against oath but the fact that the revisionist has not been able to give out any reason for her deserting him would be a strong circumstance to indicate that her husband treated her cruelly and turned her out of the house. Finding in this regard of the Trial Judge cannot be said to be perverse or not supported by the evidence and circumstances on record. As the revisionist was treating his wife cruelly and harassing her, she was justified in refusing to live with him. The notice served by him upon her would not make any difference. The pendency of the suit for restoration of conjugal rights would not also make any effect because it cannot be ruled out that such suits are filed in order to create a ground for non-payment of maintenance allowance to the wife. Simply for the fact that no FIR was lodged by the Opposite Party No. 2 it cannot be taken that the allegations regarding cruelty and harassment are false. In the normal course no wife goes to lodge the FIR against her husband because that would further embitter their relations and in that case there would have been the least chance for both of them coming together again. She filed the maintenance application after about eight years but that would not lead to the conclusion that the allegations made therein are wrong. According to her, her father was no longer able to maintain her and their son and for that reason she had to file the application for seeking

maintenance.

5. It was next urged that the Opposite Party No. 2 is in a position to maintain herself and, therefore, no maintenance could have been granted. The Opposite Party No. 2 in her cross-examination gave out that she is able to get some work for which she is paid about Rs. 15/- or Rs. 16/- per day. She has also stated that she is able to get such work only 4-6 days in a month. I do not think this income would be sufficient for her and their son. It was also urged that the revisionist has only two bighas of land which is barely sufficient to maintain him. He is under legal obligation to maintain his wife and minor son. If the agricultural income is not sufficient, he must do some other work to earn money. He gave out his age as about 35 years. He can seek additional employment or can start a small cottage industry to earn. Since he is in a position to earn more it cannot be said that he is not in a position to pay maintenance allowance to his wife and son. I do not find any infirmity in the judgment of the Trial Court. The revision has no force and is dismissed.