
(1995) 04 AHC CK 0092
In the Allahabad High Court
Case No : Criminal Revision No. 1550 of 1992

Suresh Mittal

APPELLANT

Vs

Smt. Saras Gupta

RESPONDENT

Date of Decision : 05-04-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (1995) 2 DMC 238

Hon'ble Judges : C.A. Rahim, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

C.A. Rahim, J.—This revision arises out of the judgment and order dated 4.9.1982 passed by the IV Additional Chief Judicial Magistrate, Etawah in Case No. 262 of 1990 u/s 125 Cr. P.C. allowing maintenance to the opposite party at the rate of Rs. 400/- per month from the date of institution of the application.

2. The order of the learned Magistrate has been challenged mainly on the ground that the Additional Chief Judicial Magistrate, Etawah has got no jurisdiction to by the case and that the opposite party is not unable to maintain herself. It has also been stated that the opposite party has deserted the revisionist and lived separately and that the revisionist having retired from service does not have sufficient means to provide his wife.

3. With regard to the first part the learned Counsel has submitted that the marriage took place on 29.11.1987 at Delhi at the opposite party lived there upto 10.12.1987 and she left the place of her husband. So the Etawah Court has got no jurisdiction to try this case. In reply the learned Counsel for the opposite party has referred Section 126 Cr.P.C. wherein it has been provided that proceeding u/s 125 may be taken against any person in any district; (b) where he or his wife resides. He has submitted that though the marriage took place at Delhi, and the opposite party resided with her husband at Delhi but after being

deserted when she began to live with her parents at Etawah and hence Etawah Court has jurisdiction to try this case. I fully agree with the contention of the learned Counsel for the opposite party and find that the contention of the learned Counsel for the petitioner has got no force.

4. It has been stated by the revisionist that she being an M.A. has earning Rs. 600/- per month. In that connection the revisionist has examined D.W.I who has stated that the opposite party was earning Rs. 600/- per month on tuition but after going through the evidence on record I find that he learnt the said fact from others who were not examined in this case. So it becomes hearsay evidence and cannot be relied upon. There is no other evidence that the opposite party has got separate earning. The learned Counsel for the opposite party has submitted that solely because she is an M.A. the Court should not presume in the absence of any evidence that she is or was earning anything or is able to maintain herself.

5. As regards the income of the revisionist or refusal to maintain the opposite party she has examined herself and P.W. 2 who has corroborated P.W.1 in this respect. The situation leading to her desertion only after a couple of days of the marriage has been clearly depicted in the petition of complaint and also in her evidence. Nothing has been elicited in cross-examination to disbelieve her statement. It is the curse of the dowry system prevailing in the country that a conjugal life ended in misery only after a couple of days and for that the opposite party cannot be held liable. In our society marriage takes place with the hope of long and peaceful conjugal relation. But when the O.P. was sent to the house of her father there must be some circumstances for which the conjugal relation came to an unhappy end. At that time the husband was employed and was earning Rs. 1377/- per month but according to the revisionist he was dismissed later on. The situation that has been explained by the opposite party in this case fits in with the story of demanding dowry on behalf of the husband. In any way the circumstance for which she was compelled to leave her matrimonial home and was not taken back was not certainly within her grip and for that the husband must be held responsible. So I find that the decision of the learned Magistrate in this regard cannot be held to be against the evidence on record.

6. The last submission on behalf of the petitioner is that he has no sufficient means to maintain the opposite party. It has been submitted that his service was terminated on 4.6.1990 and since then he does not have any income to provide him or his wife. In reply the learned Counsel for the opposite party has submitted that the petitioner was earning Rs. 1377/- and if he is dismissed from service still then as a able bodied person he must maintain his wife. So in these hard days an award of Rs. 400/- per month is not on the high side. He has referred a decision reported in 1995 ACC 35 wherein the word "means" Used in Section 125(1) Cr.P.C. has been defined. According to the said decision it includes the earning capacity of a man where a man is found to be healthy and able bodied he must be taken to have the "means" to support his wife. Considering that view of the matter I do not consider that the petitioner is unable to maintain

his wife having no sufficient means and in that regard I do not find that Rs. 400/- awarded to the opposite party is more than sufficient for her.

Considering all these circumstances I do not find any merit in this revision application and the same is dismissed. The stay order dated 7.11.1992 is hereby vacated.