
(1983) 01 P&H CK 0031

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 960-M of 1982

Tripta wife of Sat Parkash

APPELLANT

Vs

Sat Parkash son of Nagina Ram

RESPONDENT

Date of Decision : 31-01-1983

Acts Referred:

Citation : (1983) 1 RCR(Criminal) 343

Hon'ble Judges : M.M.Punchhi, J

Advocate : Y.P. Gandhi, Ravinder Seth, Advocates for appearing Parties

Judgement

M.N. Punchhi, J. (Oral)

1. This petition under section 482 of the Code of Criminal Procedure would merit outright acceptance.

2. The petitioner claims herself to be a destitute wife. She filed a petition under section 125 of the Code of Criminal Procedure against her husband who is working as a Clerk in the police of the Block Development Officer, Kapurthala. In her petition, she alleged specifically that she was unable to maintain herself. It seems that in her evidence she did not narrate this particular. The learned Magistrate dealing with the petition took the view that she had failed in the matter, of proof that she was unable to maintain herself. On that ground, he dismissed the petition without going into the question to the quantum of maintenance, if at all she was entitled. The Court of revision endorsed the view. It is in these circumstances that the petitioner was obliged to come to this Court.

3. There has raged a controversy in the judicial field whether Proceedings under section 125 of the Code of Criminal Procedure are civil or criminal in nature, as also whether the pleadings in that regard have to conform to civil standards. The matter has been set at rest by a Division Bench of this Court in Chanan Singh v. Jangir Kaur, 1983(1) RCR(Cr.) 307 (P&H) : Criminal Revision No. 134 of 1980. decided on 17th December, 1982. The Bench has held that technicalities of construing civil pleadings are not attracted to an application under section 125 of

the Code of Criminal Procedure and that the proceedings are essentially criminal. It has also been held that the absence of an express pleading that the claimant is unable to maintain herself or himself is in no way fatal to the claim. This Court has also ruled in *Sant Kaur v. Gurmukh Singh*, 1982 P.L.R. 555, that even if the wife in her statement made in Court did not make a specific assertion that she was unable to maintain herself, that alone would not disentitle her from maintenance if there is other evidence on the file that she was unable to maintain herself. Thus the entire conspectus of things has to be taken into consideration and not mere technicalities. The Courts below entrapped themselves in such a web and thus need be extricated therefrom by upsetting the orders of the Courts below to further the interest of justice.

4. Accordingly, this petition is allowed. The orders of the Additional Sessions Judge as also that of the Judicial Magistrate 1st Class, Jullundur are quashed and the matter is remitted to the learned trial Magistrate to proceed with it in accordance with law. He also need be reminded that proceeding under section 125 of the Code of Criminal Procedure are summary in nature and such provision is on the Statute Book to provide timely succor and relief to the destitute wives. In that spirit, let him decide this petition within a period of two months at the most from the date of the receipt of records of this case. Parties through their counsel are directed to appear before the Judicial Magistrate 1st Class, Jullundur, on 16th February, 1983.