

RAJATHI
v.
C. GANESAN

JULY 22, 1999

[S. SAGHIR AHMAD AND D.P. WADHWA, JJ.]

Criminal Law :

Criminal Procedure Code, 1973 :

Section 125(3) Explanation to Second Proviso—Husband lived with another woman—Wife failed to prove his second marriage under S.494 IPC—Held : Under such circumstances, wife entitled to live separately.

Section 125(3) Explanation to Second Proviso—Maintenance Petition—Wife lived separately—Duration of such living not pleaded—Held : wife is not required to plead as to since when she was living separately—This not a relevant consideration.

Section 125(1)(a)—Expression “unable to maintain herself”—Meaning of—Held : Would mean the means available to the wife while she was living with her husband and not after her desertion—Onus on the husband to show that he has no sufficient means to discharge his obligation and that he did not neglect or refuse to maintain his wife—Statement of wife that she was unable to maintain herself would be enough—It would be for the husband to prove otherwise.

*Section 125—Maintenance proceedings—Conduct of—By trial court—Scope—Held : Trial court is to take a **prima facie** view of the matter—Trial court not required to go into the matrimonial disputes between the parties in detail.*

Sections 397(3) and 482—Second revision—Bar of—First revision dismissed by Sessions Court—However, High Court allowed second revision—Held : Inherent powers of High Court not a substitute for second revision—Hence, High Court wrongly exercised its jurisdiction under under S.482.

Words and Phrases :

A *“Unable to maintain herself”—Meaning of —In the context of S. 125(1)(a) of Criminal Procedure Code, 1973.*

B The appellant-wife presented a petition under Section 125 of the Criminal Procedure Code, 1973 against her husband respondent alleging that her husband having sufficient means neglected or refused to maintain her and that she was unable to maintain herself. The Magistrate granted maintenance at the rate of Rs. 200 per month to the appellant-wife. The revision petition filed by the respondent-husband was dismissed by the Sessions Court. But the High Court allowed the respondent’s petition under Section 482 Cr. P.C. Hence this appeal.

C Allowing the appeal, this Court

D HELD : 1.1. In the present case the wife alleged that her husband had contracted a second marriage. She filed a complaint for an offence under Section 494 of the Penal Code, 1860, which was dismissed and the husband was acquitted. The High Court took this circumstance against the wife and adversely commented on her refusal to live with her husband. The High Court lost sight of the fact that it would be difficult for the wife to prove the second marriage. To prove the second marriage as a fact essential ceremonies constituting it must be proved and if second marriage is not proved to have been validly performed by observing essential ceremonies and customs in the community, conviction under Section 494 IPC ought not to be made. The fact, however, remains in the present case that the husband is living with another woman. Proviso to Section 125(3) of the Criminal Procedure Code, 1973 would squarely apply and justify refusal of the wife to live with her husband. There can be, however, other grounds for the wife to refuse to live with her husband, e.g., if he subjects her to cruelty. [1052-F-H]

G 1.2. This was a case where the husband neglected or refused to maintain his wife. The High Court did not consider the question if husband was having sufficient means. It rather unnecessarily put the burden on the wife to prove that she was unable to maintain herself. The words “unable to maintain herself” would mean, that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after the desertion to survive somehow. Section 125 of the Code is enacted on the premise that it is the obligation of the husband to maintain his wife, children and parents. It will, therefore, be for him to show that he has no sufficient means to discharge his obligation and that he did not neglect or refuse to maintain them or any one of them. The High Court also

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observed that the wife did not plead as to since when she was living separately. This is not quite a relevant consideration. Even though the wife was unable to prove that husband has remarried, yet the fact remained that the husband was living with another woman. That would entitle the wife to live separately and would amount to neglect or refusal by the husband to maintain her. Statement of the wife that she is unable to maintain herself would be enough and it would be for the husband to prove otherwise. [1053-A-D]

2.1. In the present case, the High Court minutely examined the evidence and came to the conclusion that the wife was living separately without any reasonable cause and that she was able to maintain herself. All this the High Court did in exercise of its powers under Section 482 of the Code which powers are not a substitute for a second revision under Section 397(3) of the Code. The very fact that the inherent powers conferred on the High Court are vast would mean that these are circumscribed and could be invoked only on certain set principles. [1055-A-B]

2.2. It was not necessary for the High Court to examine the whole evidence threadbare to exercise jurisdiction under Section 482 of the Code. Rather in a case under Section 125 of the Code, the trial court is to take a *prima facie* view of the matter and it is not necessary for the Court to go into the matrimonial disputes between the parties in detail. Therefore, the High Court wrongly exercised its jurisdiction under Section 482 of the Code in passing the impugned order. [1055-C-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 687 of 1999.

From the Judgment and Order dated 4.12.97 of the Madras High Court in CrI. O.P. No. 11292 of 1997.

S. Sivasubramaniam and R. Ayyam Perumal for the Appellant.

R. Mohan Sr. Advocate and M.A. Chinnaswamy for the Respondent.

The Judgment of the Court was delivered by

D.P. WADHWA, J. Leave granted.

This is wife's appeal against order dated December 4, 1997 of the Madras High Court passed in exercise of its jurisdiction under Section 482 of the Criminal Procedure Code ('Code' for short). By this order wife was deprived

A of maintenance of Rs.200 per month granted to her under Section 125 of the Code.

B Wife presented a petition under Section 125 of the Code on February 3, 1993 claiming from her husband, the respondent, maintenance for herself and her two daughters. The minor son of the parties is living with the husband. In the present appeal we are concerned with the grant of maintenance to the wife. She alleged that her husband having sufficient means neglected or refused to maintain her and that she was unable to maintain herself. In the petition wife had claimed maintenance at the rate of Rs.500 per month.

C Learned Judicial Magistrate, by order dated April 24, 1995, granted her maintenance only at the rate of Rs.200 per month. Husband felt aggrieved and he went in revision to the Court of Sessions. The learned Sessions Judge, Salem, by order dated November 5, 1996 dismissed the revision petition filed by the husband and confirmed the order of grant of maintenance to the wife at the rate of Rs.200 per month. Still feeling aggrieved husband filed a petition

D under Section 482 of the Code in the Madras High Court. This was allowed by learned single Judge, who by the impugned order, set aside the orders both of the Judicial Magistrate and the Sessions Judge and dismissed the petition of the wife for maintenance. Now the wife has come to this Court.

E Proceedings under Section 125 of the Code are of summary nature. This Section is meant to provide immediate relief to the wife, minor children and parents, who are unable to maintain themselves. A maximum of Rs.500 per month can be granted to the wife under this Section. This will be when husband having sufficient means neglects or refuses to maintain her, she being unable to maintain herself. Section 125 we may quote in extenso:-

F "125. Order for maintenance of wives, children and parents. - (1) If any person having sufficient means neglects or refuses to maintain -

- (a) his wife, unable to maintain herself, or
- G** (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself,
- H** or

- (d) his father or mother, unable to maintain himself or herself. A

A Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: B

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means. C

Explanation. - For the purposes of this Chapter, -

- (a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority; D

- (b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

- (2) Such allowance shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance. E

- (3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made: F

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due: G

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and H

A may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

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(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

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(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order."

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If we refer to proviso to sub-section (3) of Section 125 where a husband offers to maintain his wife on the condition of her living with him and she refuses to live with him a Magistrate may consider any ground of refusal stated to her and nevertheless make an order notwithstanding such offer, if the Magistrate is satisfied that there is just ground for so doing. Explanation to the proviso states that if a husband has contracted marriage with any other

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woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

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In the present case wife alleged that her husband had contracted a second marriage on January 4, 1990. She filed a complaint for an offence under Section 494 of the Indian Penal Code. It is stated that the complaint was dismissed and husband was acquitted. High Court took this circumstance against the wife and adversely commented on her refusal to live with her husband. High Court, lost sight of the that it would be difficult for the wife to prove the second marriage. This Court has held that to prove the second marriage as a fact essential ceremonies constituting it must be proved and if

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second marriage is not proved to have been validly performed by observing essential ceremonies and customs in the community, conviction under Section 494 IPC ought not to be made. The fact, however, remains in the present case that the husband is living with another woman. Proviso to sub-section (3) would squarely apply and justify refusal of the wife to live with her husband. There can be, however, other grounds for the wife to refuse to live with her

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husband, e.g., if she is subjected to cruelty by him. It was a case where the

husband neglected or refused to maintain his wife. High Court did not consider the question if husband was having sufficient means. It rather unnecessarily put the burden on the wife to prove that she was unable to maintain herself. The words "unable to maintain herself" would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after the desertion to survive somehow. Section 125 is enacted on the premise that it is obligation of the husband to maintain his wife, children and parents. It will, therefore, be for him to show that he has no sufficient means to discharge his obligation and that he did not neglect or refuse to maintain them or any one of them. High Court also observed that the wife did not plead as to since when she was living separately. This is not quite a relevant consideration. Even though wife was unable to prove that husband has remarried, yet the fact remained that the husband was living with another woman. That would entitle the wife to live separately and would amount to neglect or refusal by the husband to maintain her. Statement of the wife that she is unable to maintain herself would be enough and it would be for the husband to prove otherwise.

We may also have a look at the provisions of the Hindu Adoption and Maintenance 1956, which provides for maintenance to a Hindu wife. Under Section 18 of this Act a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time. Under sub-section (2) she will be entitled to live separate from her husband without forfeiting her claim to maintenance,- (a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of willfully neglecting her; (b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband; (c) if he is suffering from a virulent form of leprosy; (d) if he has any other wife living; (e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere; (f) if he has ceased to be a Hindu by conversion to another religion; and (g) if there is any other cause justifying her living separately. Under sub-section (3) a Hindu wife is not entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be Hindu by conversion to another religion. It will be apposite to keep these provisions in view while considering the petition under Section 125 of the Code.

We are not going into the question if the High Court on examining the

A case on merit was correct in coming to the conclusion that the wife was possessed of sufficient means and was able to maintain herself. In the present appeal, We are only concerned to see if the High Court was justified in invoking its inherent powers under Section 482 of the Code and we do not think the High Court was right.

B In *Krishnan & Anr. v. Krishnaveni & Anr.*, [1997] 4 SCC 241, this Court explained the scope and power of the High Court under Section 482 of the Code. The question before the Court was if in view of the bar of second revision under sub-section (3) of Section 397 of the Code was prohibited, inherent power of the High Court is still available under Section 482 of the Code. This Court said as under :

C “Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has *suo motu* power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justice can be ensured only when trial is conducted expeditiously.”

In the present case, the High Court minutely examined the evidence and came to the conclusion that the wife was living separately without any reasonable cause and that she was able to maintain herself. All this High Court did in exercise of its powers under Section 482 of the Code which powers are not a substitute for a second revision under sub-section (3) of Section 397 of the Code. The very fact that the inherent powers conferred on the High Court are vast would mean that these are circumscribed and could be invoked only on certain set principles.

It was not necessary for the High Court to examine the whole evidence threadbare to exercise jurisdiction under Section 482 of the Code. Rather in a case under Section 125 of the Code trial court is to take a prima facie view of the matter and it is not necessary for the court to go into the matrimonial disputes between the parties in detail. Section provides maintenance at the rate of Rs.500 per month. There is outcry that this amount is too small. In the present case, however, we are quite surprised that the court granted paltry amount of Rs.200 per month as maintenance which was confirmed in the revision by the Sessions Court and the High Court thought it fit to interfere under Section 482 of the Code in exercise of its inherent jurisdiction.

Whatever may be the merit of the case, High Court wrongly exercised its jurisdiction under Section 482 of the Code in passing the impugned order. The appeal is allowed and the impugned order dated December 4, 1997 of the High Court is set aside.

We will award Rs. 1,000 as cost to the appellant.

V.S.S.

Appeal allowed.