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ALLAHABAD HIGH COURT

(LUCKNOW BENCH)

SANJAY HARKAULI , J.Criminal Revision No. 119 of 2010 **D/- 13 - 12 - 2018**

Vimla Devi v. State of U.P. and Anr.

**Criminal P.C. (2 of 1974), S.125 - Maintenance - Wife seeking enhancement of maintenance to Rs. 1500/- - On ground that husband owned 20 bighas of agricultural land and earned monthly Rs.5000/- - Husband earned Rs.20-25 per day, total income of month Rs.750 per and additional income from one bigha of agricultural land Rs.250/- month and if income was enhanced slightly from some other sources, come to Rs.1000-1200 per month - Wife worked as labourer for some time can not held incompetent to earn her livelihood - Enhancement , rejected.**

Rama Kant Dixit,Mrinal Chandra for Petitioner; Govt. Advocate,Alok Kr. Misra for Respondent.

**Judgement**

**ORDER :-**By means of this criminal revision, judgment passed by the Second Additional Sessions Judge, Bahraich in Criminal Revision No.769 of 2006 dated 02.11.2007 has been challenged. By means of the impugned judgment, the learned Second Additional Sessions Judge had set aside the judgment passed by the Judicial Magistrate, Bahraich in Criminal Case no.252 of 2006 on 31.8.2006 in proceedings under Section 125 Cr.P.C.

Brief facts of the case are that the revisionist Vimla Devi had filed Criminal Case no.252 of 2006 thereby asserting her right to maintenance under Section 125 Cr.P.C. from opposite parties-Ram Saroj, her husband and parents of her husband. Her allegations there were that Vimla Devi got married to Ram Saroj about three and a half years back from the date of filing the case under Section 125 Cr.P.C.

After one year of marriage, ceremony of Gauna was performed and Vimla Devi had come to live with Ram Saroj as husband-wife. She thereafter lived as wife with Ram Saroj for six months. Parents of Ram Saroj were by nature greedy while Ram Saroj himself did not possess good character and he had relations with ladies residing nearby in the market area. Ram Saroj was also addicted to alcohol. Ram Saroj and his parents started demanding buffalo, bicycle, wrist watch and upon expression of inability to bring these articles, Ram Saroj and his parents started harassing Vimla Devi including physical assault. Left with no alternative, Vimla Devi went to her parental house. Thereafter on 15.5.1995, panchayat was convened in which, Ram Saroj and his parents accepted their fault and assured better behaviour in future. Thereupon, Vimla Devi once again went to her husband's house but the harassment was resumed for non-fulfilment of demand for additional dowry including threat of pouring kerosene oil upon Vimla Devi and lighting fire to it.

Initially, four months prior to filing of the case, the opposite parties snatched away clothes and ornaments and turned Vimla Devi out of their house. Vimla Devi returned to her parents' house where

she lived and meted her day-to-day needs by working as a labourer. Thereafter, Vimla Devi found it difficult to meet her daily needs without a maintenance allowance.

The opposite parties owned 20 bighas of agricultural land. They have four cows, two buffalos and also owned a house. They also used to deal in trading of milk by which, they earned Rs.5000/- per month and in the circumstances, Vimla Devi was entitled to Rs.1500/- per month as maintenance from them.

The opposite parties furnished their written statement, wherein they admitted the factum of marriage and asserted that marriage was performed in 1988 and according to them, in 1993, Gauna was performed and Vimla Devi had come to the house of opposite parties, but after a short stay of 3-4 days, she voluntarily went back to her father's place. Thereafter in July, 1993, again she came to her husband's house but left for her maternal home within a span of fifteen days. She came back in 1994 and in August, 1995 and without informing to any of the opposite parties, she went away to her parents' residence along with clothes and ornaments. The opposite parties went to the residence of Vimla Devi's father along with some relatives and members belonging to the same community, where it was decided that Vimla Devi would come to live with her husband. The agreement was not complied with and instead Vimla Devi in connivance with her parents and local police, procured the attendance of Ram Saroj in the police station and there, he was forced to sign certain documents so that jewellery etc. taken by Vimla Devi could be retained by her. Further, parents of Ram Saroj are under no legal obligation to maintain Vimla Devi.

Additional pleadings were filed on 5.7.2004 by Vimla Devi asserting therein that Ram Saroj had performed an illegal second marriage with Mintu, daughter of Nanku and out of this relationship, a daughter Km. Savita has also been born and Mintu is living in the house of Ram Saroj as his wife.

Additional written statement was filed by Ram Saroj, wherein it was denied that he and his parents were owning 20 bighas of agricultural land or they had any animals or were dealing in sale and purchase of milk, thereby earning Rs.5000/- a month. Ram Saroj in his written statement reasserted that he had only one bigha of agricultural land and by working as labourer in the field, he could manage to earn Rs.20-25 per day.

Opportunity of oral evidence was allowed by the learned Magistrate and from the side of applicant, Vimla Devi was examined as APW-1, Shree Ram as APW-2 and Rajendra as APW-3. From the side of opposite parties, Ram Saroj was examined as OPW-1, Triveni Prasad as OPW-2 and Ram Roop as OPW-3. From the applicant's side, compromise before the panchayat was filed by Vimla Devi along with copy of kutumbh register.

Learned Magistrate after hearing learned counsel for both sides, formulated the following five points to be determined in the matter:

- (1) Whether the husband has sufficient means to maintain his wife;
- (2) Whether the wife was competent to maintain herself;
- (3) Whether the husband had voluntarily neglected his wife;
- (4) Whether the wife had sufficient reasons for living separately from her husband; and

(5) Whether the wife was entitled to live separately and claim maintenance from her husband.

Thereafter, learned Magistrate proceeded to analyze and examine the pleadings on record. He firstly held that parents of the husband were under no legal obligation to maintain the wife and then the learned Magistrate examined the means available with the husband to maintain his wife. For this, he relied upon the admission of the husband in written statement that the husband owned one bigha of agricultural land and that he was an agricultural labourer from which, he earned Rs.20-25 per day and accordingly, this part of the pleadings was read against the husband thereby presuming that the husband had an earning of Rs.20-25 per day, by putting forth his services as agricultural labourer and that he was also owning one bigha of agricultural land. Learned Magistrate accordingly opined that the husband had sufficient means to maintain his wife.

Learned Magistrate thereafter proceeded to examine the second point i.e. whether the wife was competent to maintain herself. Learned Magistrate went in detail thereby finding that the wife was a non-educated lady and was also not skilled otherwise. Learned Magistrate found that in this regard, there was no documentary evidence on record and then proceeded to examine and analyze the oral evidence. He found that there was no landed property in the name of the wife and her initial earning as a labourer also could not continue. Accordingly, the conclusion was arrived at that the wife was not in a position to maintain herself.

Learned Magistrate thereafter examined as to whether the husband had voluntarily neglected to maintain his wife. He examined the photocopy of the compromise and the oral evidence on record and found that it was on account of intolerable behaviour of the husband and his parents as also the fact that the husband had brought Mintu, another lady to live as wife with him and from their relationship, a daughter was also born. Accordingly, it was found that there was sufficient reason for the wife to be living separately and willful neglect on the part of the husband to maintain the wife.

Learned Magistrate found that in the circumstances, the wife was entitled for maintenance from the husband.

From the admission of the husband in the written statement, it was concluded that the husband was in possession of one bigha agricultural land and could manage to earn Rs.20- 25 per day by working as an agricultural labourer. In the said circumstances, an amount of Rs.1200/- per month was ordered to be paid as maintenance from Ram Saroj.

Aggrieved from the aforesaid judgment of the learned Magistrate, husband Ram Saroj filed Criminal Revision No.769 of 2006 before the learned Second Additional Sessions Judge, Bahraich. The learned Second Additional Sessions Judge after hearing the parties in question held that even if Rs.20-25 were earned per day by the husband, the total of this would come to Rs.750 per month and additional income from one bigha of agricultural land could be Rs.250/- a month and if the income was enhanced slightly from some other sources, then it would come to Rs.1000-1200 per month. The income of the husband, therefore, has not been calculated by the learned Magistrate properly. The learned Second Additional Sessions Judge further held that when initially after returning to her parents' home the wife could manage to maintain herself by working as a labourer, this fact also should have been taken into account by the learned Magistrate and only such maintenance should have been awarded as would be necessary beyond the earnings of the wife herself. Learned Second Additional Sessions Judge also found that Pariwar register as filed has also not been looked into properly. He accordingly, passed the judgment impugned thereby remanding the case back to the learned Magistrate to first properly fix

the salary of the husband, to take into account the entries in the Pariwar register, to also calculate the earnings of the wife herself and only after this exercise, to determine the amount of maintenance per month. Aggrieved by the said order, present criminal revision has been filed by the wife.

I have heard learned counsel for the revisionist, learned A.G.A. for respondent no.1 and learned counsel for the private respondent no.2. I have also perused the record.

The first question on which, the case has been remanded back is that the income of the husband has not been properly assessed on the basis of evidence. As against this, perusal of the judgment of learned Magistrate goes to show that income of the husband was broadly assessed on the basis of admission of the husband himself in the written statement. Further, an illiterate lady, the wife, who is living in her parental home cannot possibly adduce evidence with regard to every possible details about the earnings of the husband. She could have had information of her husband's earnings while living as wife with him and accordingly on oath, she had stated before the learned court, therein specifying the source of earnings and approximate amount of earning of her husband. This aspect is not capable of any mathematical calculation and has to be assessed by the learned Judge.

The judgment of the learned Magistrate shows that he had gone in great detail for assessing the income of the husband and nothing wrong can be seen in it while awarding the amount of maintenance as Rs.1200/- per month.

Similarly, the learned Magistrate has also examined the question as to whether the wife was competent to maintain herself. A lady in desperation can work as a labourer for some time, but she cannot obviously continue with this for long, especially with child. This fact has specifically been stated by the wife in her statement on oath before the learned Magistrate and this point has also been analyzed in its proper perspective that the lady is not in a position to maintain herself.

There was a specific assertion in the pleadings by the wife that in spite of the marriage continuing to be valid, the husband kept Mintu to live with him as wife and from their relationship, a child was also born.

This obviously would constitute a sufficient cause for a wife to live separately. It is in the aforesaid circumstances that it would be incorrect to say that the income of the husband was not properly assessed before passing of the impugned judgment by the learned Magistrate.

Hon'ble Supreme Court in the case of Chaturbuj vs. Sita Bai, AIR 2008 SC 530, has held that the phrase "unable to maintain herself" in Section 125 Cr.P.C. means unable to maintain herself in the way she was living with her husband. This aspect has also been considered by the learned Magistrate while passing the impugned judgment.

In the totality of circumstances, there was no sufficient reason warranting the learned Second Additional Sessions Judge to interfere with the impugned judgment of the learned Magistrate, thereby awarding maintenance @ Rs. 1200/- per month to the wife.

The impugned judgment accordingly cannot be allowed to stand and, therefore, the judgment passed in Criminal Revision No.769 of 2006 on 02.11.2007 is hereby set aside.

The judgment passed by the learned Magistrate in Criminal Case no.252 of 2006 on 31.8.2006 is hereby affirmed.

With these observations, this Criminal Revision no.119 of 2010 is hereby disposed of.