

Deochand

Vs

The State of Maharashtra and Another

Criminal Appeal No. 27 of 1971

(CJI A. N. Ray, V. R. Krishna Iyer, Y. V. Chandrachud JJ)

04.04.1974

JUDGMENT

CHANDRACHUD, J. -

1. The second respondent who is the wife of the appellant filed against him an application for maintenance under Section 488, Code of Criminal Procedure. The application was founded on two grounds : one, that the appellant was neglecting and refusing to maintain her and two, that he had contracted a second marriage with one Kamala. The learned Judicial Magistrate, First Class, Sakoli, dismissed that application holding that though the appellant had taken a second wife he had neither neglected nor refused to maintain the second respondent. The second respondent filed a revision application against that order in the Sessions Court, Bhandara. Taking the view that the fact that the appellant had contracted a second marriage during the subsistence of his marriage with the second respondent was sufficient to entitle her to an order for maintenance; the learned Sessions Judge made a reference to the High Court. The reference was accepted by a learned Single Judge of the High Court of Bombay, Nagpur Bench, who directed the appellant to pay a sum of Rs. 50 per mensem to the second respondent by way of maintenance. A Division Bench of the High Court has granted to the appellant leave to appeal to this Court under Article 134(1)(c) of the Constitution.

2. Section 488(3) of the Code provides to the extent material that if a husband has contracted marriage with another woman, it shall be considered to be a just ground for his wife's refusal to live with him. Counsel for the appellant, however, urges that there is no legal evidence of the appellant's marriage with Kamala and therefore the second respondent is not entitled to maintenance on the ground that the appellant has contracted a second marriage. We are unable to accept this submission. As observed by the High Court the evidence of the second respondent, her father and of a neighbour was enough to prove that a lawful marriage had taken place between the appellant and the second respondent. The learned Magistrate and the learned Sessions Judge have also accepted that evidence and we see no reason to take a contrary view thereof.

3. As the second respondent was justified in refusing to live with the appellant, the latter was under a legal obligation to maintain her. As he has neglected to maintain her the High Court was justified in passing the order under appeal.

4. It was urged on behalf of the appellant that some time after the High Court passed its judgment the appellant has obtained against the second respondent a decree from restitution of conjugal rights and that the decree would afford a complete answer to the order passed by the High Court. We are not inclined to investigate into the question whether a decree for the restitution has in fact been passed in favour of the appellant and if so what is the impact of that decree on the order of the

maintenance passed by the High Court. The appellant may take such steps as he may be advised in furtherance of the decree said to have been passed in his favour.

5. In the result we confirm the judgment of the High Court and dismiss the appeal.

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