

Bhupinder Singh

Vs

Daljit Kaur

Review Petition No. 95 of 1978

(V. R. Krishna Iyer, A. P. Sen, P. N. Shinghal JJ)

13.11.1978

ORDER

1. A short narrative of the facts is necessary to explore and explode the submission that a substantial question of law arises, which merits grant of leave under Article 136 of the Constitution. The respondent is the wife of the petitioner. She moved the Magistrate, having jurisdiction over the subject-matter, for grant of maintenance under Section 125 of the Criminal Procedure Code. The Court Awarded maintenance in a sum of Rs. 250 per mensem but the order was made ex parte since the petitioner did not appear in Court. The motion for setting aside the ex parte order was dismissed, whereupon a criminal revision was filed by the husband before the High Court. During the pendency of the said petition a compromise was entered into between the parties as a result of which the wife resumed cohabitation with the husband. This resumption of conjugal life was followed by an application by the wife (respondent) praying that her application for maintenance be dismissed and the execution proceedings for recovery of arrears of maintenance be withdrawn. Apparently, on this basis the trial Court did not proceed to recover arrears of maintenance. But as the record now stands, the order for maintenance remains. That has not been set aside and must be treated as subsisting. The High Court apparently dismissed the revision petition on the score that the parties had compromised the dispute.

2. Later developments were not as smooth as expected. The wife was betrayed, because her allegation is that her husband is keeping a mistress making it impossible for her to live in the conjugal home. Naturally, she proceeded to enforce the order for maintenance. This was resisted by the petitioner (husband) on the ground that resumption of cohabitation, after the original order for maintenance revoked the said order. This plea having been rejected right through, the petitioner has come up to this Court seeking leave to appeal. The short question of law pressed before us is that the order for maintenance under Section 125 of the Code is superseded by the subsequent living of the wife with the husband and is unavailable for enforcement.

3. Counsel has relied on a ruling of the Madras High Court in Natesa Pillai v. Jayammal (AIR 1960 Mad 515 : 1960 Cri LJ 1470). The holding in that case is that resumption of cohabitation puts an end to the order of maintenance. The learned Judge observed :

On the authority of the above decisions I must hold in this case that there was a reunion for some time and that put an end to the order under Section 488, Cr. P.C. If the wife separated again from the husband, then she must file another petition, a fresh cause of action, and obtain an order if she satisfies the Court that there is sufficient reason to leave her husband and that he neglected to maintain her.

4. To the same effect is the decision of the Andhra High Court reported in 1955 Andhra Law Times Reports (Criminal), page 244. The head-note there reads :

If a wife who has obtained an order of maintenance under Section 488 rejoins her husband and lives with him, the order is revoked and cannot be enforced subsequently, if they fall out again. If there are fresh grounds, such as would entitle her to obtain maintenance under Section 488, it is open to her to invoke the jurisdiction of court once again for the same relief.

5. An earlier Rangoon case also lends support to this proposition.

6. A contrary position has found favour with the Lahore High Court in *Fazal Din v. Fatima* (AIR 1932 Lah 115 : 33 Cri LJ 121). The facts of that case have close similarity to the present one and the head-note brings out the ratio with sufficient clarity. Shadi Lal, C.J., observed :

Now, in the present case the compromise, as pointed out above, was made out of Court and no order under Section 488, Cr. P.C. was made in pursuance of that compromise. Indeed, the order of the Magistrate allowing maintenance at the rate of Rs. 10 per mensem was neither rescinded nor modified, and no ground has been shown why that order should not be enforced. If the husband places his reliance upon the terms of the compromise, he may have recourse to such remedy in a Civil Court as may be open to him. The criminal Court cannot however take cognizance of the compromise and refuse to enforce the order made by it.

This reasoning of the learned Chief Justice appeals to us.

7. We are concerned with a Code which is complete on the topic and any defence against an order passed under Section 125, Criminal Procedure Code must be founded on a provision in the Code. Section 125 is a provision to protect the weaker of the two parties, namely, the neglected wife. If an order for maintenance has been made against the deserter it will operate until vacated or altered in terms of the provision of the code itself. If the husband has a case under section 125(4), (5) or section 127 of the Code it is open to him to initiate appropriate proceedings. But until the original order for maintenance is modified or cancelled by a higher court or is varied or vacated in terms of Section 125(4) or (5) or Section 127, its validity survives. It is enforceable and no plea that there has been cohabitation in the interregnum or that there has been a compromise between the parties can hold good as a valid defence. In this view, we hold that the decisions cited before us in favour of the proposition contended for by the petitioner are not good law and that the view taken by Sir Shadi Lal, Chief Justice, is sound.

8. A statutory order can ordinarily be demolished only in terms of the statute. That being absent in the present case the Magistrate will execute the order for maintenance. Our does not and shall not be deemed to prejudice the petitioner in any proceedings under the law which he may start to vacate or vary the order for maintenance.

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