

Pathumma and Another

Vs

Muhammad

Criminal Appeals Nos. 462-A-463 of 1981

(M. M. Dutt, V. Khalid JJ)

17.04.1986

JUDGMENT

DUTT, J. -

1. These two appeals by special leave have been preferred by the appellants against the judgment of the High Court of Kerala dismissing the criminal revision petition of the appellants and allowing that of the respondent, both arising out of a proceeding under Section 125 of the Code of Criminal Procedure instituted by the appellants.

2. The appellants filed an application before the Judicial Magistrate, First Class, Pattambi, under Section 125 of the Code of Criminal Procedure. The said application was numbered as M.C. No. 5 of 1978. In the application, it was alleged that the respondent married appellant 1, Pathumma, 6 years ago as per Muslim rites and the respondent resided with her as husband and wife. When she was carrying two months, she was taken to her father's house by the respondent. Thereafter, the respondent left her there and did not enquire about her. Subsequently, the respondent divorced her without, however, making any payment to her of any mahr or other compensation. It was further alleged that appellant 2, Sulekha, a minor daughter, was born out of the wedlock. The appellants had no means of livelihood and accordingly, they claimed maintenance respectively at the rate of Rs 100 and Rs 50 per month from the respondent. The application was opposed by the respondent. The case of the respondent was that he never married appellant 1, and that appellant 2 was not his child, legitimate or illegitimate.

3. The learned Magistrate by his order dated March 24, 1979 came to the finding that the marriage of the respondent with appellant 1, as alleged, was not proved and, as such, appellant 1 was not the wife of the respondent. The learned Magistrate, however, held that appellant 2 was the illegitimate child of the respondent. In that view of the matter, the learned Magistrate directed the respondent to pay maintenance to appellant 2 at the rate of Rs 25 per month from the date of the application under Section 125 CrPc.

4. Against the order of the learned Magistrate, the appellants filed a revision petition being Cri. R.P. No. 204 of 1979 before the High Court of Kerala insofar as it refused the claim of appellant 1 for maintenance. The respondent also filed another petition being Cri. R.P. No. 188 of 1979 against the order of the learned Magistrate directing payment of maintenance at the rate of Rs 25 per month to appellant 2. Both the said revision petitions were heard together by a learned Single of the High Court.

5. The learned Judge by his judgment dated November 21, 1980 upheld the finding of the learned

Magistrate that the marriage of the respondent with appellant 1 was not proved and that, accordingly, appellant 1 was not the wife of the respondent. So far as the order of the learned Magistrate directing payment of maintenance to appellant 2, the minor child of appellant 1 as concerned, the learned Judge made a re-assessment of the evidence and came to the finding that appellant 2, Sulekha, was not the illegitimate child of the respondent. Accordingly, the learned Judge dismissed the revision petition of the appellants being Cr. R.P. No. 204 of 1979 and allowed that of the respondent being Cr. R.P. No. 188 of 1979. The net result was that the order of the learned Magistrate allowing maintenance to appellant 2, was set aside and the entire application of the appellants under Section 125 CrPc stood dismissed.

6. The questions whether appellant 1 was the married wife of the respondent and whether appellant 2 was the legitimate or illegitimate child of the respondent, are pre-eminently questions of fact. The learned Magistrate after considering the evidence, as adduced by the parties, held that appellant 1 was not the wife of the respondent. He further held on the basis of the evidence on record that appellant 2 was the legitimate child of the respondent. We are afraid, the learned Judge of the High Court committed an error in making a re-assessment of the evidence and coming to a finding that appellant 2 was not the illegitimate child of the respondent. We have ourselves considered the evidence on record and we agree with the learned Magistrate, who had taken much pains in analysing the evidence, that appellant 2 was the illegitimate child of the respondent. The High Court in its revisional jurisdiction was not justified in substituting its own view for that of the learned Magistrate on a question of fact.

7. For the reasons aforesaid, we set aside the order of the High Court insofar as it disallows the claim of appellant 2, Sulekha, for maintenance as granted by the learned Magistrate and dismiss the Criminal Revision Petition No. 188 of 1979. Criminal Appeal No. 462-A of 1981 is accordingly allowed.

8. The order of the High Court dismissing Criminal Revision Petition No. 204 of 1979 is affirmed and the Criminal Appeal No. 463 of 1981 is dismissed.

9. There will be no order for costs in either of the appeals.

10. The appellants are granted liberty to approach the learned Magistrate for the enhancement of the amount of maintenance of appellant 2.

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