

SUPREME COURT OF INDIA

Manoj Yadav

Vs.

Pushpa @ Kiran Yadav

CrI.A.No.6568 of 2009

(Markandey Katju and Gyan Sudha Misra JJ.)

23.11.2010

ORDER

1. Yesterday (22-11-2010) we had passed an order in this case, but subsequently Ms. Kamini Jaiswal, whom we had requested to be Amicus Curiae in this case, informed us that the above order requires some modification. We agree with this submission, and accordingly we are modifying the order passed yesterday.

2. It appears that in the original Code Criminal Procedure of 1973 the maximum maintenance which could be granted by the Magistrate under Section 125 (1) Cr.PC was Rs.500/- per month. Subsequently by the Code Criminal Procedure (Amendment) Act of 2001 enacted by Parliament the words "not exceeding five hundred rupees in the whole" in Section 125(1) were deleted w.e.f. 24.9.2001. In the Statement of Objects to the Act of 2001 it was stated:

“The ceiling of rupees five hundred per month for maintenance allowance was prescribed in the year 1955 in Section 488 of the Code of Criminal Procedure, 1898. A ceiling of rupees five hundred was prescribed in Section 125 of the Code Criminal Procedure, 1973 on the lines of Section 488 of the Code Criminal Procedure, 1898 which has since been repealed. In view of the cost of living index continually rising, retention of a maximum ceiling is not justified. If a ceiling is prescribed and retained, it would require periodic revision taking into account the inflation and rise in the cost of living as well as amendment of provisions of the Act from time to time. This would necessarily be time consuming. Accordingly, it is also proposed to amend Section 125 and make consequential changes in Section 127 of the Code Criminal Procedure to remove the ceiling of maintenance allowance.” Prior to the 2001 amendment of the Code Criminal Procedure by Parliament many State Legislatures had passed State Amendments of Section 125(1) Code Criminal Procedure enhancing the maximum maintenance which could be granted from Rs.500/- per month to a higher figure. Obviously it was felt by those State Legislatures that Rs.500/- per month is not sufficient. Hence these State Amendments were made for the benefit of the women because at that time the 2001 Amendment had not been enacted by Parliament, and

there was a maximum limit of Rs.500/- per month in Section 125(1) for grant as maintenance.”

3. The States which had made these State Amendments prior to the 2001 Amendment enhancing the maintenance from Rs.500/- per month to a higher figure are the States of Madhya Pradesh, Maharashtra, Rajasthan, Tripura and Uttar Pradesh.
4. We are prima facie of the opinion that in view of the 2001 Amendment to the Code of Criminal Procedure by Parliament, the maximum maintenance prescribed by the above mentioned State Legislatures are no longer valid in view of Article 254(1) of the Constitution, apart from being unconstitutional now as being violative of Articles 14 and 21 of the Constitution as we have indicated in our order passed yesterday. However, this is only our prima facie opinion and subject to the final order passed in this case. Issue notice to the State Governments of Madhya Pradesh, Maharashtra, Rajasthan, Tripura and Uttar Pradesh, who may file counter affidavit within four weeks from today. The case has been listed for final disposal on 11.01.2011 and we reiterate that date.
5. However, since the counsels for the above mentioned State Governments are not present in Court today, list this case again tomorrow before us showing the names of counsels for the State Governments of Madhya Pradesh, Maharashtra, Rajasthan, Tripura and Uttar Pradesh.