

[2023/RJJD/005994]

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 178/2012

Sunil Kumar

-----Petitioner

Versus

4. State of Rajasthan

-----Respondent

For Petitioner(s) : Mr. Sandeep Saruparia
For Respondent(s) : Mr. S.S. Rajpurohit, PP

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

ORDER RESERVED ON ::: **14/02/2023**
ORDER PRONOUNCED ON ::: **24/02/2023**

BY THE COURT:-

The present Misc. Petition under Section 482 Cr.P.C. has been preferred by the petitioner aggrieved from the order dated 25.06.2011 passed by learned Additional Sessions Judge, Nathdwara in Criminal Revision No.24/2009 (Sunil Kumar Vs. Smt. Bhawna & Ors.) whereby the revision preferred by the petitioner against the order dated 23.10.2008 passed by the learned Judicial Magistrate Ist Class, Nathdwara in Criminal Case No. 123/2007 was dismissed.

Learned counsel for the petitioner submitted that the order of learned Judicial Magistrate Ist Class, Nathdwara (herein after referred to as 'the trial Court') for granting maintenance was upheld by the learned Additional Sessions Judge, Nathdwara (herein after referred to as 'the revisional court') without investigating the fact that the main allegation against the respondent No.1 was adultery and the petitioner raised specific defence with supporting evidence that respondent No.2 was having illicit relations with one _____ as she left matrimonial home at the instance of _____. He submitted that the language of Section 125 Cr.P.C. emphatically lays down that in case if wife is living in adultery or without any sufficient reasons, refuses to live with her husband or if living separately by mutual consent then, she is not entitled for grant of any maintenance. He submitted that the deposition of NAW-2 and the documents exhibited in the evidence before the learned trial Court proved the defence as raised by the present petitioner. He further submitted that respondents No.1 to 3 are not entitled for grant of maintenance. He further submitted that petitioner is a poor man and a daily wager, having insufficient means of earning thus, he is not in a position to pay maintenance amount to respondents No.1 to 3 as ordered by the learned trial Court.

Aforesaid contentions were opposed by the learned Public Prosecutor for the state while submitting that there is concurrent findings of both the Courts below.

Heard learned counsel for the petitioner and learned Public Prosecutor. Despite service, respondents No.1 to 3 have not

appeared before this Court. Perused the material available on record.

The fact of the matter is that a petition under Section 125 Cr.P.C. was filed by respondent-wife and two minor children of present petitioner on 18.05.2007 before the trial Court. After filing the reply by present petitioner, evidence of AW-1 in support of application under Section 125 Cr.P.C. was recorded and in defence evidence statements of NAW-1 Sunil and his father NAW-2 Bhimraj were recorded by the trial Court and on the basis of evidence so recorded, vide order dated 25.10.2008, the trial Court passed an order under Section 125 Cr.P.C. in favour of the respondents herein whereby the petitioner was ordered to pay Rs.1,000/- per month to and Rs.1,500/- per month to each of respondent No.2 and 3 from the date of passing the order.

The said order was further challenged by the present petitioner in Criminal Revision Petition No.24/2009 before the learned revisional Court on the grounds of adultery and poor economic condition of the petitioner but after considering these two grounds, the same was dismissed.

One of the important fact which was noticed by the Courts below is that at one point of time petitioner levelled allegation of adultery upon the respondent No.2 and at the very same time, the petitioner filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. The learned trial Court as well as learned revisional Court observed that allegation of illicit relation with was purely made on the basis of doubt. The

learned trial Court while noticing the language of Ex.D-6A observed that only on the basis of doubt, this letter was executed by but mere a letter is not sufficient to castigate the character of wife of the present petitioner.

On perusal of language used in letter and also the evidence as recorded by the learned trial Court, it is found that no substantial full proof evidence was adduced by the petitioner so as to conclude that respondent No.1 was ever remained in adultery with anyone. It is further evident from the record that was a worker in the establishment run by present petitioner or his family thus, is very well known to the petitioner and his family members that too, in the capacity of master and servant relationship. Thus, the evidence adduced by the present petitioner is not sufficient enough to draw a conclusion that respondent No.1 was living in adultery. The fact remains that the present petitioner despite allegation of adultery, had made efforts to reside with respondent-wife for which he filed a petition under Section 9 of the Hindu Marriage Act, thus these contentions cannot be accepted.

As regards to quantum of maintenance as compared to income of present petitioner is concerned, perusal of the facts and evidence recorded indicates that petitioner is continuously residing at Mumbai, which is a metro city and maintenance of Rs.4,000/- per month to respondents No.1 to 3, as ordered by learned trial Court, is not a huge amount looking to the fact that petitioner was running a business. Though, he deposed that the said business was closed due to reasons as stated by him but whatsoever be the

case is, non-payment of maintenance amount to respondents No.1 to 3 is not permissible. In all circumstances, the husband is liable to pay maintenance to his wife and minor children.

The provision provided under Section 125 Cr.P.C. is a measure of social justice extended to protect rights of wife and minor children with the object to prevent vagrancy and destitution, as held by Hon'ble the Supreme Court in the case of ***Dwarka Prasad Satpathy Vs. Bidyut Prava Dixit & Anr. AIR 1999 SC 3348.***

In view of the discussion made hereinabove, the defence and allegations leveled against the respondent No.1 are neither proved nor sufficient to escape from paying maintenance amount as awarded by the learned trial Court under Section 125 Cr.P.C. thus, the present Misc. Petition under Section 482 Cr.P.C. filed on behalf of petitioner being devoid of any merit, is hereby dismissed. The stay application and all pending applications are stand disposed of.

(ASHOK KUMAR JAIN),J