

CHATURBHUI

A

v.

SITA BAI

NOVEMBER 27, 2007

[DR. ARIJIT PASAYAT AND AFTAB ALAM, JJ.]

B

*Code of Criminal Procedure, 1973:*

*s.125—Claim for maintenance by wife—Wife not having sufficient means to maintain herself and husband having sufficient means—Order of maintenance by Courts below after analyzing evidence—Interference with—Held: Conclusion of courts below that wife was unable to maintain herself was essentially factual and not perverse—Thus, interference not called for—Constitution of India—Article 136.*

D

*s.125—Maintenance proceedings—Object of—Held: s.125 is a measure of social justice, especially enacted to protect women, children and parents when they are unable to maintain themselves, and falls within constitutional sweep of Article 12(3) reinforced by Article 39 of the Constitution—Constitution of India, 1950—Articles 15(3) and 39—Social justice.*

E

*Words and phrases: “unable to maintain herself”—Meaning of—In the context of s.125 of Code of Criminal Procedure, 1973.*

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**The respondent-wife filed an application under s.125 Cr.P.C. claiming Rs.10,000/- as maintenance from the appellant-husband. In the application, it was claimed that she was unemployed and unable to maintain herself.**

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**The stand of the appellant was that the wife was living in the house constructed by him; that she had let out the house on rent and since 1979 was residing with one of their sons; that the wife had sold the**

A agricultural land and sale proceeds were still with her; and that she could maintain herself from the money received from the sale of agricultural land and rent.

B Considering the evidence on record, the trial Court directed husband to pay Rs.1500 per month opining that the wife did not have sufficient means to maintain herself. The revisional Court analysed the evidence and dismissed the revision petition holding that the appellant's monthly income was more than Rs.10,000/- and the amount received as rent by the respondent-wife was not sufficient to maintain herself.

C Appellant filed an application under s.482 Cr.P.C. before the High Court. The High Court dismissed the application holding that the conclusions by the trial Court and the Revisional Court were arrived at on appreciation of evidence and therefore there was no scope for any interference. Hence the present appeal.

D Dismissing the appeal, the Court

E HELD: 1.1. The object of the maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. The phrase "unable to maintain herself" would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after desertion to survive somehow. S.125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children and falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India, 1950. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. [Para 5] [586-B, C, D, E]

G *Captain Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors.*, AIR (1978) SC 1807 and *Savitaben Somabhai Bhatiya v. State of Gujarat and Ors.*, (2005) 2 Supreme 503, relied on.

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1.2. Under the law, the burden is placed in the first place upon the wife to show that the means of her husband are sufficient. In the instant case, there is no dispute that the appellant has the requisite means. But there is an inseparable condition which has also to be satisfied that the wife was unable to maintain herself. These two conditions are in addition to the requirement that the husband must have neglected or refused to maintain his wife. The appellant has placed material to show that the respondent-wife was earning some income. That is not sufficient to rule out application of s.125 Cr.P.C. It has to be established that with the amount she earned the respondent-wife was able to maintain herself. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient she can claim maintenance under s.125 Cr.P.C. The test is whether the wife is in a position to maintain herself in the way she was used to at the place of her husband.

[Paras 6, 7 and 8] [583-F, G; 584-A, B, C]

*Bhagwan v. Kamla Devi*, AIR (1975) SC 83, relied on and reiterated.

2. The trial Court, the Revisional Court and the High Court analysed the evidence and held that the respondent wife was unable to maintain herself. The conclusions are essentially factual and they are not perverse. That being so there is no scope for interference in this appeal. [Para 9] [584-D, E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1627 of 2007.

From the Judgment and Order dated 31.3.2006 of the High Court of Madhya Pradesh, Bench at Indore in Misc. CrI. Case No.1385/2006.

Shashindra Tirpathi, Sharad Tripathi and Debasis Misra for the Appellant.

Shashi Bhushan Kumar for the Respondent.

The Judgment of the Court was delivered by

A **DR. ARIJIT PASAYAT, J.** 1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Madhya Pradesh High Court, Indore Bench, dismissing the revision petition filed by the appellant in terms of Section 482 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.'). The challenge before the High Court was to the order passed by learned Judicial Magistrate, First Class, Neemuch, M.P. as affirmed by the learned Additional Sessions Judge, Neemuch, M.P. The respondent had filed an application under Section 125 of Cr.P.C. claiming maintenance from the appellant. Undisputedly, the appellant and the respondent had entered into marital knot about four decades back and for more than two decades they were living separately. In the application it was claimed that she was unemployed and unable to maintain herself. Appellant had retired from the post of Assistant Director of Agriculture and was getting about Rs.8,000/- as pension and a similar amount as house rent. Besides this, he was lending money to people on interest. The appellant claimed Rs.10,000/- as maintenance. The stand of the appellant was that the applicant was living in the house constructed by the present appellant who had purchased 7 bighas of land in Ratlam in the name of the applicant. She let out the house on rent and since 1979 was residing with one of their sons. The applicant sold the agricultural land on 13.3.2003. The sale proceeds were still with the applicant. The appellant was getting pension of about Rs.5,700/- p.m. and was not getting any house rent regularly. He was getting 2-3 thousand rupees per month. The plea that the appellant had married another lady was denied. It was further submitted that the applicant at the relevant point of time was staying in the house of the appellant and electricity and water dues were being paid by him. The applicant can maintain herself from the money received from the sale of agricultural land and rent. Considering the evidence on record, the trial Court found that the applicant-respondent did not have sufficient means to maintain herself.

3. Revision petition was filed by the present appellant. Challenge was to the direction to pay Rs.1500/- p.m. by the trial Court. The stand was that the applicant was able to maintain herself from her income was reiterated. The revisional court analysed the evidence and held that the appellant's monthly income was more than Rs.10,000/- and the amount

received as rent by the respondent-claimant was not sufficient to maintain A  
 herself. The revision was accordingly dismissed. The matter was further  
 carried before the High Court by filing an application in terms of Section  
 482 Cr.P.C. The High Court noticed that the conclusions have been arrived  
 at on appreciation of evidence and, therefore, there is no scope for any  
 interference. B

4. Section 125 Cr.P.C. reads as follows:

“125. (1) If any person having sufficient means neglects or refuses  
 to maintain—

(a) his wife, unable to maintain herself, or C

(b) his legitimate or illegitimate minor child, whether married or not,  
 unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) D  
 who has attained majority, where such child is, by reason of any  
 physical or mental abnormality or injury unable to maintain itself,  
 or

(d) his father or mother, unable to maintain himself or herself, E

a Magistrate of the First Class may, upon proof of such neglect or  
 refusal, order such person to make a monthly allowance for the  
 maintenance of his wife or such child, father or mother, at such  
 monthly rate not exceeding five hundred rupees in the whole, as  
 such Magistrate thinks fit, and to pay the same to such person as F  
 the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor  
 female child referred to in clause (b) to make such allowance, until  
 she attains her majority, if the Magistrate is satisfied that the husband  
 of such minor female child, if married, is not possessed of sufficient G  
 means. *Explanation* .—For the purposes of this Chapter,—

(a) ‘minor’ means a person who, under the provisions of the  
 Indian Majority Act, 1875 (9 of 1875), is deemed not to have  
 attained his majority; H

A (b) 'wife' includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried."

B ["(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.";]

C (3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's allowance 4 [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

E Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

F Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

G Explanation.-If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

H (4) No wife shall be entitled to receive an 4 [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be] from her husband under this

section if she is living in adultery, or if, without any sufficient reason, A  
she refuses to live with her, husband, or if they are living separately  
by mutual consent.

(5) On proof that any wife in whose favour an order has been B  
made under this section is living in adultery, or that without sufficient  
reason she refuses to live with her husband, or that they are living  
separately by mutual consent, the Magistrate shall cancel the order.”

5. The object of the maintenance proceedings is not to punish a C  
person for his past neglect, but to prevent vagrancy by compelling those  
who can provide support to those who are unable to support themselves  
and who have a moral claim to support. The phrase “unable to maintain D  
herself” in the instant case would mean that means available to the deserted  
wife while she was living with her husband and would not take within itself  
the efforts made by the wife after desertion to survive somehow. Section  
125 Cr.P.C. is a measure of social justice and is specially enacted to E  
protect women and children and as noted by this Court in *Captain  
Ramesh Chander Kaushal v. Mrs. Veena Kaushal and Ors.*, AIR  
(1978) SC 1807 falls within constitutional sweep of Article 15(3)  
reinforced by Article 39 of the Constitution of India, 1950 (in short the F  
‘Constitution’). It is meant to achieve a social purpose. The object is to  
prevent vagrancy and destitution. It provides a speedy remedy for the  
supply of food, clothing and shelter to the deserted wife. It gives effect  
to fundamental rights and natural duties of a man to maintain his wife,  
children and parents when they are unable to maintain themselves. The  
aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. G  
State of Gujarat and Ors.*, (2005) 2 Supreme 503).

6. Under the law the burden is placed in the first place upon the  
wife to show that the means of her husband are sufficient. In the instant  
case there is no dispute that the appellant has the requisite means. G

7. But there is an inseparable condition which has also to be satisfied  
that the wife was unable to maintain herself. These two conditions are in  
addition to the requirement that the husband must have neglected or  
refused to maintain his wife. It to be established that the wife was unable H

A to maintain herself. The appellant has placed material to show that the respondent-wife was earning some income. That is not sufficient to rule out application of Section 125 Cr.P.C. It has to be established that with the amount she earned the respondent-wife was able to maintain herself.

B 8. In an illustrative case where wife was surviving by begging, would not amount to her ability to maintain herself. It can also be not said that the wife has been capable of earning but she was not making an effort to earn. Whether the deserted wife was unable to maintain herself, has to be decided on the basis of the material placed on record. Where the personal income of the wife is insufficient she can claim maintenance under C Section 125 Cr.P.C. The test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband. In *Bhagwan v. Kamla Devi*, AIR (1975) SC 83 it was observed that the wife should be in a position to maintain standard of living which is neither D *luxurious nor penurious* but what is consistent with status of a family. The expression “unable to maintain herself” does not mean that the wife must be absolutely destitute before she can apply for maintenance under Section 125 Cr.P.C.

E 9. In the instant case the trial Court, the Revisional Court and the High Court have analysed the evidence and held that the respondent wife was unable to maintain herself. The conclusions are essentially factual and they are not perverse. That being so there is no scope for interference in this appeal which is dismissed.

F D.G. Appeal dismissed.