

Gurcharan Singh Vs. Mst. Sito

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Court : Punjab and Haryana

Decided On : Sep-15-1972

Reported in : 1973CriLJ1628

Judge : C.G. Suri, J.

Appellant : Gurcharan Singh

Respondent : Mst. Sito

Judgement :

ORDER

C.G. Suri, J.

1. Gurcharan Singh petitioner has put in this revision petition against the order of Shri Pawan Kumar Garg, Judl. Magistrate 1st Class, Bhatinda dated 5-6-1969 whereby he fixed a sum of Rs. 40/- for the maintenance of Mst. Sito respondent a sum of Rs. 10/- each for her two children from the date of order till marriage of the daughter and majority of the son.

2. The facts giving rise to this revision petition briefly told are that Smt. Sito put in an application before the Ilaqa Magistrate under Section 488, Criminal Procedure Code for maintenance for herself and for her two children against the petitioner on the ground that she was married to the petitioner about 4 years back and she gave birth to two children and the petitioner began to mal-treat her and turned her out of his house and with the help of the village panchayat the respondent (Sito in this case) went to the petitioner's house and again the petitioner began to mal-treat her and she had to return to her parents' house for safety of her life. At that time she was pregnant from the petitioner and she gave birth to a son.

3. The application for maintenance filed by Sito was opposed by the petitioner on the ground that Sito was a lady of loose character and that she was pregnant at the time of marriage but however he admitted the factum of marriage.

4. Shri Pawan Kumar Garg after recording the evidence of the parties passed the impugned order as stated above.

5. The petitioner feeling aggrieved by that has put in this revision petition. Notice of this revision was given to the other party and record of the lower court was summoned.

6. I have heard the counsel for the parties and have gone through the record

carefully.

7. The learned Counsel for the petitioner has contended that the trial court did not take into consideration the means of income of the petitioner and as a matter of fact the court was bound to first fix the income of the petitioner and then to fix amount of maintenance taking into consideration other liabilities of the petitioner but the Trial Court failed to do so and as such the impugned order was arbitrary, illegal and without jurisdiction. In support of his arguments he has cited : AIR1963All355 pt. (b) where it has been held that:-

Amount of maintenance has to be fixed having due regard to income of husband and other facts necessary to be considered. Amount awarded without fixing income of husband held arbitrary.

8. I think it is proper and necessary that the learned Magistrate while fixing maintenance allowance under Section 488, Criminal Procedure Code ought to determine the income of the husband because it is the income of the husband and status of the parties which have to be considered while fixing the maintenance allowance. It has been observed in : AIR1963All355 that amount of maintenance should be fixed having regard to the income of the husband and other facts and amount of maintenance cannot be properly fixed without finding income of the husband. There is not sufficient evidence on the file to arrive at the conclusion what is the income of the petitioner.

9. Consequently I forward the record of this case to the High Court of Judicature of the States of Punjab and Haryana at Chandigarh with the recommendation that the order of the learned Magistrate fixing maintenance allowance at Rs. 60/- be set aside and the case be sent back to the court with the direction that firstly the income of the petitioner should be found and then the amount of maintenance be fixed taking into consideration his income.

The parties through their counsel have been directed to appear in the High Court on 19-11-1971.