

Rakhi vs The State Of Uttarakhand on 21 January, 2020

Bench: D.Y. Chandrachud, Ajay Rastogi

Crl.A.136/2020

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No 136 of 2020
(Arising out of SLP(Crl) 9971 of 2019)

Smt Rakhi

Versus

State of Uttarakhand and Another

ORDER

1 Leave granted.

2 This appeal arises from a judgment of the High Court of Ut

revision from an order of the Family Court determining the maintenance payable to the appellant under Section 125 of the Code of Criminal Procedure 1973 1. 3 The appellant and the second respondent married on 6 June 2006. They have two children: a son who is twelve years old and a daughter who is ten years old. Matrimonial disputes have arisen between the appellant and the second respondent. The appellant claims that she was compelled to leave her matrimonial home on 12 June 2014. The record before this Court contains a litany of allegations which, strictly speaking, it is not necessary for the Court to 1CrPC 4 The appellant moved an application for maintenance under Section 125 on 24 July 2015, seeking an amount of Rs 15,000 per month. The second respondent moved a petition under Section 9 of the Hindu Marriage Act 1955 which was dismissed on 6 October 2015. A divorce petition which was filed by the second respondent has been dismissed by the Family Court. By an order dated 28 July 2018, the Family Court directed the second respondent to pay maintenance in a sum of Rs 2,000 per month to the appellant. The appellant challenged the order of the Family Court in a revision. By an order dated 29 July 2019, the High Court enhanced the maintenance to Rs 4,000 per month. 5 The grievance of the appellant is that the order of the High Court enhancing the monthly maintenance from Rs 2,000 to only Rs 4,000 contains no analysis or reasons. The appellant submits that the second respondent is engaged in Bharat Heavy Electricals Limited 2 as an Artisan Grade-I. In support of the appeal, which seeks enhancement of maintenance

awarded by the High Court, the appellant has relied on the salary slip of the second respondent for July 2019 which reflects a basic pay of Rs 48,870. Inclusive of allowances, the total earnings of the second respondent are shown to be Rs 75,516. 6 A counter affidavit has been filed on behalf of the second respondent controverting the submissions which have been made in the Special Leave Petition. Learned counsel appearing on behalf of the second respondent drew the attention of the Court to the contents of the counter affidavit. More 2 BHEL specifically, it has been submitted that the appellant had sold a plot which had been purchased by the second respondent some time in the year 2011. According to the learned counsel, an amount of approximately Rs 4 lac was realized by the appellant as consideration for sale of the plot. Annexure R-I to the counter affidavit is a copy of the salary slip of the second respondent for December 2019. The salary slip reflects a basic pay of Rs 48,870. Together with allowances, the total earnings of the respondent for the month of December 2019 were Rs 75,516. However, it has been submitted on behalf of the second respondent that the deductions from the salary of the second respondent amounts to Rs 65,295, leaving a net pay of Rs 10,221. Moreover, it has been stated that the second respondent has been looking after the two children who reside with him. The appellant has moved a guardianship petition which is pending.

7 In evaluating the rival submissions, it is apparent from the record, as it stands, that the second respondent is gainfully employed in BHEL as an Artisan Grade I. The salary slip which is on the record indicates that the total earnings of the second respondent for the month of December 2019 were to Rs 75,516. Undoubtedly, there are deductions from the salary. These deductions chiefly consist of a contribution to the provident fund, petrol expenses and loan recoveries. Having regard to the nature of the deductions, it would, in our view, not be appropriate and proper to proceed on the basis of the net pay of Rs 10,221. Learned counsel appearing on behalf of the second respondent submits that the respondent is ready and willing to hand over the entire salary which he receives to the appellant, provided she meets all the expenses from the salary. The suggestion is merely an attempt to avoid the liability to maintain the appellant. The appellant is not gainfully employed. The maintenance ought to have been fixed in a reasonable amount. Neither the amount of Rs 2,000, that was fixed by the trial Court, nor the amount of Rs 4,000 which has been fixed by the High Court can be regarded to be reasonable. 8 Having regard to the facts and circumstances and, particularly the nature of the employment and the amount of salary which is drawn by the second respondent, we deem it appropriate and proper to enhance the maintenance, which is payable to the appellant to Rs 15,000 per month. The amount of maintenance shall be payable with effect from the month of January 2020 on or before the seventh day of each succeeding month.

9 The appeal is allowed in the above terms. There shall be no order as to costs.

.....J. [Dr Dhananjaya Y Chandrachud]
J. [Ajay Rastogi] New Delhi;

January 21, 2020

ITEM NO.5

COURT NO.8

SECTION II

S U P R E M E C O U R T O F

I N D I A

RECORD OF PROCEEDINGS

SMT. RAKHI

Appellant

VERSUS

STATE OF UTTARAKHAND & ANR.

Respondents

Date : 21-01-2020 This appeal was called on for hearing today. CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD HON'BLE MR. JUSTICE AJAY RASTOGI For Appellant(s) Mr. Shreshth Nanda, Adv.

Mr. Vineet Bhagat, AOR For Respondent(s) Mr. Ashok Kumar Sharma, Sr. Adv.

Mr. Kshitij Mudgal, Adv.

Mr. Akshay C. Shrivastava, Adv. Mr. Parmanand Gaur, AOR Mr. Ekansh Bansal, Adv.

Mr. Akhil Sharma, Adv.

Mr. Sudarshan Singh Rawat, AOR UPON hearing the counsel the Court made the following O R D E R Leave granted.

The appeal is allowed in terms of the signed order.

(Chetan Kumar)
A.R.-cum-P.S.

(Saroj Kumari Gaur)
Court Master

(Signed order is placed on the file)