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MANIK KUTUM

v.

JULIE KUTUM

Criminal Appeal No.448 of 2019

B

MARCH 07, 2019

**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI , JJ.]**

Code of Criminal Procedure, 1973:

C

s.125 – Maintenance – Application for maintenance filed by the respondent (wife) for herself and for her minor daughter – Trial court partly allowed the claim and awarded Rs. 2000/- p.m. towards maintenance for her minor daughter but rejected the claim insofar as it related to the respondent on the ground that she was not legally married wife of the appellant – Respondent filed revision in High Court – High Court remanded the case to trial court to decide application afresh – On husband's appeal, held: High Court erred in remanding the case to trial court for fresh inquiry and for fixing the maintenance for the respondent (wife) – The need to remand the case to the trial court is called for only when some factual inquiry is required to be held to decide any factual issue involved in the case which cannot be undertaken at the revision stage or when it is noticed that there is no finding on any particular factual issue recorded by the trial court or when additional evidence is filed for the first time at the appellate/revision stage which requires examination by the trial court in the first instance and to record a finding in the light of such additional evidence – Such was not the case here because all the material for fixing the maintenance was on record – Appellant was working as Constable in RPF and his monthly salary was between Rs.30,000/- to Rs.35,000/- per month – Therefore, Rs.8,000/- is fixed as monthly maintenance payable by the appellant (husband) to the respondent (wife) – Appellant (husband) to pay a total sum of Rs.10,000/- every month to the respondent (wife), i.e., Rs.8,000/- towards maintenance for the respondent (wife) and Rs.2,000/- towards maintenance for minor daughter which is already fixed by the trial court and is upheld as being just and proper – Revisionary jurisdiction – Maintenance.

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Disposing of the appeal, the Court

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HELD: 1. The High Court having recorded a finding of fact in the impugned order that the respondent-wife was the legally wedded wife of the appellant, it should not have then remanded the case to the SDJM for any inquiry and instead should have fixed the maintenance payable by the appellant (husband) to the respondent (wife) in the revision itself. More so because the respondent was not earning and had no independent source of any income to maintain herself. [Para 11][919-D]

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2. The need to remand the case to the SDJM is called for only when some factual inquiry is required to be held to decide any factual issue involved in the case which cannot be undertaken at the revision stage or when it is noticed that there is no finding on any particular factual issue(s) recorded by the SDJM or when additional evidence is filed for the first time at the appellate/revision stage which requires examination by the SDJM in the first instance and to record a finding in the light of such additional evidence. Such is not the case here because all the material for fixing the maintenance was on record. It is for these reasons, there was no need to remand the case to the SDJM as it would only prolong the litigation causing harm to the respondent(wife). The appellant is working as Constable in RPF. His monthly salary is between Rs.30,000/- to Rs.35,000/- per month. It is just and proper to fix Rs.8,000/- as monthly maintenance payable by the appellant (husband) to the respondent (wife). The appellant (husband) will pay a total sum of Rs.10,000/- every month to the respondent (wife), i.e., Rs.8,000/- towards maintenance for the respondent (wife) and Rs.2,000/- towards maintenance for minor daughter which is already fixed by the SDJM and which is upheld as being just and proper. [Paras 12-15][919-E-H; 920-A, B]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 448 of 2019

From the Judgment and Order dated 01.08.2017 by the Gauhati High Court at Guwahati, Assam in Criminal Revision Petition No. 102 of 2012.

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Ms. Seema Sharma, Somiran Sharma, Advs. for the Appellant.

Sahil Tagotra, Adv. for the Respondent.

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- A The Judgment of the Court was delivered by
ABHAY MANOHAR SAPRE, J. 1. Leave granted.
2. This appeal is directed against the final judgment and order dated 01.08.2017 passed by the Gauhati High Court at Guwahati in Criminal Revision Petition No.102 of 2012 whereby the High Court while disposing of the Criminal Revision Petition filed by the respondent herein, set aside the order dated 21.11.2011 of the sub-Divisional Judicial Magistrate(SDMJ), Gossaigaon, Assam in Misc. Case No.28/2009 and remanded the case to the SDMJ to decide the application filed by the respondent herein afresh.
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- C 3. A few facts need mention for the disposal of this appeal.
4. The appellant is the husband and the respondent is the wife. The respondent (wife) filed an application under Section 125 of the Code of Criminal Procedure, 1973 claiming maintenance from the appellant (husband) for herself and for her minor daughter.
- D
5. By order dated 21.11.2011, the SDJM partly allowed the application and awarded Rs.2000/- per month towards maintenance for her minor daughter but rejected the application insofar as it relates to award of maintenance to the respondent-wife on the ground that she is not the legally married wife of the appellant herein. It is against this order, the respondent-wife felt aggrieved and filed revision in the Guhati High Court.
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6. By impugned order, the High Court remanded the case to the SDJM to decide the application afresh. The concluding part of the impugned order remanding the case to SDJM reads as under:
- F **“In view of the impugned order passed by the learned court is hereby set aside. The matter is remanded to the learned trial court to declare the respondent (petitioner in the misc. case) to be the legally married wife of the present petitioner and to decide the quantum of maintenance by recording proper evidence only on the point of income and to award proper maintenance to the petitioner as well as the minor child afresh within a period of three months of receiving the order of this court. In the meantime the petitioner is directed to clear all the arrear maintenance towards the child that was granted earlier by the learned trial court till the court decides the matter afresh.”**
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7. It is against this order, the appellant(husband) has filed this appeal by way of special leave in this Court. A

8. Heard Ms. Seema Sharma, learned counsel for the appellant and Mr. Sahil Tagotra, learned counsel for the respondent.

9. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to modify the impugned order and fix the maintenance payable by the appellant (husband) to the respondent(wife) in addition to what has already been awarded by the SDJM payable for the minor daughter. B

10. In our considered opinion, the High Court erred in remanding the case to the SDJM for fresh inquiry and for fixing the maintenance for the respondent (wife). C

11. The High Court having recorded a finding of fact in Para 22 of the impugned order that the respondent-wife is the legally wedded wife of the appellant, it should not have then remanded the case to the SDJM for any inquiry and instead should have fixed the maintenance payable by the appellant (husband) to the respondent (wife) in the revision itself. It is more so because we find that the respondent is not earning and has no independent source of any income to maintain herself. D

12. In our view, the need to remand the case to the SDJM is called for only when some factual inquiry is required to be held to decide any factual issue involved in the case which cannot be undertaken at the revision stage or when it is noticed that there is no finding on any particular factual issue(s) recorded by the SDJM or when additional evidence is filed for the first time at the appellate/revision stage which requires examination by the SDJM in the first instance and to record a finding in the light of such additional evidence. Such is not the case here because all the material for fixing the maintenance was on record. It is for these reasons, we are of the view that there was no need to remand the case to the SDMJ as it would only prolong the litigation causing harm to the respondent(wife). E F

13. We, however, find from the record that the appellant is working as Constable in RPF. His monthly salary is between Rs.30,000/- to Rs.35,000/- per month. G

14. Having regard to all the facts and circumstances of the case, we consider it just and proper to fix Rs.8,000/- (Rs. Eight Thousand) as H

- A monthly maintenance payable by the appellant (husband) to the respondent (wife).

15. In other words, the appellant (husband) will pay a total sum of Rs.10,000/- (Ten Thousand) every month to the respondent (wife), i.e., Rs.8,000/- towards maintenance for the respondent (wife) and Rs.2,000/-

- B - towards maintenance for minor daughter which is already fixed by the SDJM and which we uphold as being just and proper.

16. The appellant will pay the amount of Rs.10,000/- to the respondent(wife) on 1st of every month from 01.03.2019 regularly.

- C 17. With the aforesaid modification in the impugned order in favour of the respondent(wife), the appeal thus stands disposed of.

Devika Gujral

Appeal disposed of.