Sm. Pancho vs Ram Prasad on 31 August, 1955

Equivalent citations: AIR1956ALL41, 1956CRILJ11, AIR 1956 ALLAHABAD 41

ORDER

Roy, J.

1. This is an application in revision by Srimati Pancho against an order passed on 29-8-1953, by the learned Sessions Judge of Fyzabad confirming an order dated 10-6-1953 passed by a learned Magistrate dismissing the application of the applicant under Section 488, Cr. P. C. for maintenance claimed from the husband Ram, Prasad, the opposite party, in the sum of Rs. 50/-per month. The application of Smt. Pancho under Section 488, Cr. P. C. was founded upon three principal assertions, namely, that she was ill-treated by the husband and was turned out of the house by him about five years before the making of the application after having been beaten by him and that since then she is not cared for by him; secondly, that the husband has taken another wife about seven or eight years before the making of the present application; and, thirdly, that in proceedings before the Civil Judge the husband made a false imputation against her on 29-3-1952 that she is unchaste.

The husband resisted the application on the ground that he never ill-treated the applicant and he never turned her out. He admitted that he took a second wife, but contended that he is, prepared to keep Smt. Pancho also under the same roof and to look after her maintenance. He further contended that the statement imputed to him as having been made by him on 29-3-1952, was made by him but it was not a correct statement and had been made in that litigation in order to suit the exigencies of the situation arising there. The learned Magistrate was of the opinion that there was "no systematic ill-treatment" by the husband; that petty quarrels used to crop up Between the husband and the wife, but that cannot be a ground for permanent desertion by either party; that polygamy is prevalent amongst the Hindus, and that also cannot be a ground for the wife to desert the husband; land that "it will be a sorry day for the husbands if wives leave them on slight pretexts and then turn round and claim maintenance".

The learned Magistrate accordingly dismissed the application for maintenance. The learned Sessions Judge held in the revision petition filed before him by Smt. Pancho as against the order of the Magistrate that there was no systematic ill-treatment by the husband; that although on 29-3-1952, the husband had imputed unchastity to the wife, the imputation was made without any substance in order to meet the exigencies of the situation arising in that litigation; that the character of the wife is not bad; that the fact that the husband hag taken another wife does not entitle the wife to separate maintenance; and that the order of the learned Magistrate that Smt. Fancho was not entitled to separate maintenance was eminently just and proper,

2. Sm. Pancho has preferred this application in revision before this Court against the order of the learned Sessions Judge. It has been contended on behalf of the applicant that, having regard to

Section 2(4), Hindu Married Women's Right to Separate Residence and Maintenance Act (No. 19 of 1946), the applicant is entitled to separate residence and maintenance from her husband merely on the ground that he has married, for the second time and that, irrespective of the question as to whether there was ill-treatment or not, the maintenance cannot be refused. Section 2, Sub-clause (4) of Act No. 19 of 1946 seys that, notwithstanding any custom or law to the contrary, a Hindu married woman shall be entitled to separate residence and maintenance from her husband on the ground, namely: (4) if he marries again.

It has been argued by the other side that this section is not retrospective and reliance has been placed by the other side upon a decision of the Nagpur High Court in -- 'Sukhribai v. Poh-kalsing,' AIR 1950 Nag 33 (A), where it was observed that Act No. 19 of 1946 as a whole cannot be called a declaratory Act in the strict sense of the term; that Sub-clause (4) of Section 2 of the Act cannot be called declaratory, whatever one may say of the other clauses; that this clause sup-lies a want and it is therefore, remedial; and that applying the cardinal principles of construction of Statutes affecting rights, the provisions of Sub-clause (4) of Section 2 cannot be held to be retrospective.

This view does not seem to have been adopted in -- 'Lakshmi Ammal v. Narayanaswami Nai-cker,' AIR 1950 Mad 321 (B). where it was laid down that Section 2, Sub-clause (4) of the Act is retrospective in nature. The decision was founded upon the reasoning that the judicial interpretation should be directed to avoid the consequences which are inconvenient and unjust, if this can be done without violence to the spirit or language of a Statute. If the language is ambiguous -and admits of two views, that view must not be adopted which leads to manifest public mischief or inconvenience or to injustice.

If, however, the words are plain, the Court has no right to put an unnatural interpretation on them simply to avoid mischief or injustice. In such a case no further effect should be given to the enactment than is required for the purpose of the Legislature to be achieved. In ad-vancement of a remedial Statute, everything is to be done that can be done consistently with a proper construction of it, even though it may be necessary to extend enacting words beyond their natural import and effect.

Reading Section 2 as a whole and the several clauses of the section together I am of opinion that there is no reason to hold that while all the other clauses which use the present tense refer to a state of affairs in existence at the date of a suit for separate maintenance by the wife, though it had its origin before the Act came into force Clause (4) of Section 2 must have reference only to an event which occurs after the Act comes into force.

I am in agreement with the interpretation of the words "marries again" in Section 2(4) adopted by the Madras decision cited above, where it waa observed that these words are merely descriptive of the position of the husband as a twice married man at the date when the wife's claim for separate maintenance was made under the Act and they do not exclude a husband who has taken a second wife before the Act from its operation. Therefore wives superseded by a second marriage of the husband before the Act also are entitled to separate maintenance under Section 2(4) of the Act.

The interpretation put upon these words finds support from a decision of their Lordships of the Privy Council in -- 'Duni Chand v. Mt. Anar Kali,' AIR 1946 PC 173 (C), where the Judicial Committee interpreted the words "dying intestate" in the Hindu Law Inheritance (Amend-ment) Act, 2 of 1929, not as connoting the future tense but as a mere description of the status of a deceased person not having reference to the time of his death.

The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, was designed to remedy the mischief created by a state of the law which permitted a man to marry as often, as he liked but denied to the superseded wife separate maintenance. A multiplicity of wives is not conducive to the domestic peace or the happiness of the spouses and in recognition of this fact the law has now provided separate maintenance for the superseded wife who remains chaste. There is therefore no reason why the Legislature should have made an invidious distinction between wives superseded by a second marriage of the husband before the Act and those who are so superseded by a second marriage after the Act.

The Madras view in AIR 1950 Mad 321 (B), has been followed by the Orissa High Court in -- 'Anjani Dei v. Krushna Chandra, AIR 1954 Orissa, 117 (D), where the Nagpur view cited above was expressly dissented from. The Orissa High Court also held that Section 2(4) of the Act has got retrospective effect. In the present case, therefore, both the Courts below were wrong in coming to the conclusion that the applicant was not entitled to separate maintenance by reason of the fact that the husband has taken another wife.

3. On the question as to whether there was legal cruelty, the two courts have held that it was not proved that the wife had been turned out of the house by the husband or that any physical violence had been done to her. My attention has not been drawn to any specific evidence on which that finding may be disturbed in revision.

There is, however, one piece of evidence on the record which goes to show that on 29-3-1952, in proceedings inter partes the husband maligned the wife and in his statement before the Court he stated before the Civil Judge that the wife was an unchaste woman and that in no circumstance was he prepared to get her under his roof. The learned Sessions Judge observed that that statement has been made "without any substance" and was expressed in order to meet the "exigencies of the situation in that case".

I am unable to understand how such a view can be taken of that statement. In the present case, the husband conceded that the applicant still retains her chastity. Can it be said that this statement was also made to meet the exigencies of the situation of the present case so as to overlook the mischief chat had been done to the wife by the previous statement that had been made by the husband on 29-3-1952? A husband of this 'nature, who is prone to make such statements to meet the "exigencies of the situation", cannot be said to be a husband who has taken a kindly attitude towards the first wife.

Conception of legal cruelty undergoes changes according to the changes and ad-vancement of social concept and standards of living. With the advancement of our social conceptions, this feature has

obtained legislative recognition that a second marriage is a sufficient ground for separate residence and separate maintenance. Moreover, to establish legal cruelty it is not necessary that physical violence should be used.

Continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste are all factors which may undermine the health of a wife. In such cases it would not be unreasonable to hold that the wife may legitimately apprehends that if she goes to her husband there will be a repetition of such conduct which may result in a complete breakdown of her health.

When a husband habitually insults his wife and behaves towards her with neglect and un-kindness so as to impair her health, he must be held to be guilty of cruelty. Where evidence of physical violence is not per se sufficient to warrant a finding of cruelty the Court is bound to take into consideration the general conduct of the husband towards the wife and if this is of a character tending to degrade the wife, and subjecting her to a course of intense indignity injurious to her health, the Court is at liberty to pronounce the cruelty proved.

Having regard to the facts and circumstances of the case and to all these factors I am of opinion that legal cruelty was proved and I am further of opinion that having regard to the provisions of Section 2. Sub-clause (4) of the Hindu Married Women's Right to Separate Residence and Maintenance Act, No. 19 of 1946, the wife is entitled to maintenance.

4. The question is as to what should be the quantum of maintenance. On this aspect of the matter neither of the two Courts has expressed any opinion. The matter must consequently go back to the trial Court for a decision on the quantum of maintenance having regard to the circumstances of the case. I would therefore allow the application in revision, set aside the order of the two Courts below, and direct that the case be sent back to the trial Court for a decision as to the quantum of maintenance which Smt. Fancho the applicant is entitled to from her husband Ram Prasad.