

Sunita Kachwaha And Ors vs Anil Kuchwaha on 28 October, 2014

Equivalent citations: AIR 2015 SUPREME COURT 554

Author: R. Banumathi

Bench: R. Banumathi, T.S. Thakur

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2310 OF 2014
(Arising out of SLP (CrI.) No. 2659/2012)

Sunita Kachwaha & Ors.

..Appellants

Versus

Anil Kachwaha

..Respondent

J U D G M E N T

R. BANUMATHI, J.

Delay in filing and refiling SLP condoned and leave granted.

2. This appeal is preferred against the Order dated 26.06.2008 passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Revision No.2303/2007, in and by which, the High Court has set aside the order of maintenance of Rs.3,000/- awarded to the wife while affirming the order of maintenance awarded to the two daughters.

3. Marriage of the first appellant was solemnized with respondent on 5.02.1996 as per Hindu rites and the spouses are blessed with two daughters. The first daughter Ankita is aged 12 years and second daughter Akshita is 8 years old as on the date of filing of SLP. Case of the appellant-wife is that when she was living in the matrimonial house, the respondent and her in-laws were harassing her on the ground that she has not brought sufficient dowry. The appellant-wife is alleged to have been subjected to physical and mental cruelty, demanding car and dowry. As the torture became intolerable, the appellant-wife had contacted her brothers in the year 2006, and her brothers came

to Kota to take the appellants back on 24.04.2006. The matter was reported to the SHO Police Station, Mahaveer Nagar, Kota about the cruel treatment meted out to the appellant-wife by the respondent and in-laws.

4. Because of the harassment, it is stated that the appellant-wife could not continue to reside in the matrimonial house, and the appellant- wife along with her children went to her parents house at Jabalpur. The appellants claimed maintenance by filing petition under Section 125 Cr.P.C. before the Second Additional Principal Judge, Family Court, Jabalpur. Keeping in view the need of the appellants, the Family Court by its Order dated 29.10.2007 directed the respondent to pay Rs.3,000/- per month and Rs.2,500/- per month to the appellant-wife and to each of the daughters respectively.

5. Aggrieved by the award of maintenance, respondent preferred revision petition under Section 397 Cr.P.C. before the High Court of Madhya Pradesh, Jabalpur Bench wherein the High Court has modified the order, disallowing the maintenance to the appellant-wife and affirming the award of maintenance to the daughters. Aggrieved by the said order, the unsuccessful wife has preferred this appeal, praying for setting aside the order of High Court and for appropriate maintenance.

6. We have heard the learned counsel for the appearing parties at length and perused the materials on record.

7. The High Court has set aside the award of maintenance to the wife on the ground that the separate stay of the wife due to alleged dowry torture is not justified and that she has left the matrimonial house without any justifiable ground. As referred to by the Family Court, in her evidence, the appellant-wife has clearly stated that the respondent and his mother were physically and mentally harassing her on the ground that she has brought insufficient dowry. The Family Court referred to the evidence of the appellant at length and held that she has justifiable ground to stay away from the matrimonial house and the High Court was not right in interfering with such factual findings and upsetting the maintenance order.

8. The proceeding under Section 125 Cr.P.C. is summary in nature. In a proceeding under Section 125 Cr.P.C., it is not necessary for the court to ascertain as to who was in wrong and the minute details of the matrimonial dispute between the husband and wife need not be gone into. While so, the High Court was not right in going into the intricacies of dispute between the appellant-wife and the respondent and observing that the appellant-wife on her own left the matrimonial house and therefore she was not entitled to maintenance. Such observation by the High Court overlooks the evidence of appellant-wife and the factual findings, as recorded by the Family Court.

9. Inability to maintain herself is the pre-condition for grant of maintenance to the wife. The wife must positively aver and prove that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. In her evidence, the appellant-wife has stated that only due to help of her retired parents and brothers, she is able to maintain herself and her daughters. Where the wife states that she has great hardships in maintaining herself and the daughters, while her husband's economic condition is quite good, the

wife would be entitled to maintenance.

10. The learned counsel for the respondent submitted that the appellant-wife is well qualified, having post graduate degree in Geography and working as a teacher in Jabalpur and also working in Health Department. Therefore, she has income of her own and needs no financial support from respondent. In our considered view, merely because the appellant-wife is a qualified post graduate, it would not be sufficient to hold that she is in a position to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance. The Family Court had in extenso referred to the respondent's salary and his economic condition. The respondent is stated to be an Engineer in PHE, Kota. He is in Government service and according to the pay certificate then produced before the Family Court, he was getting salary of Rs.20,268/- per month. In her evidence, appellant-wife has also stated that the respondent owns a very big house of his own in which he is said to have opened a hostel for boys and girls and is earning a substantial income. She has also stated that the respondent owns another house at Talmandi Sabji Kota, Rajasthan and is receiving rental income of Rs.4,500/- per month. Having regard to the salary and economic condition of the respondent, the Family Court has awarded maintenance of Rs.3,000/- to the wife and Rs.2,500/- to each of the daughters, in total Rs.8,000/- per month. It is stated that the maintenance amount awarded to the daughters has been subsequently enhanced to Rs.10,000/- per month. The maintenance amount of Rs.3,000/- per month awarded to the wife appears to be minimal and in our view, the High Court ought not to have set aside the award of maintenance. The learned counsel for the appellants prayed for enhancement of the quantum of maintenance to the appellant-wife. We are not inclined to go into the said submission, but liberty is reserved to the appellant- wife to seek remedy before the appropriate court.

11. The impugned order of the High Court dated 26.06.2008 passed in Criminal Revision No. 2303/2007 is set aside and this appeal is allowed. The respondent is directed to pay the maintenance of Rs.3,000/- per month to the appellant-wife as ordered by the Family Court and also pay the arrears of maintenance payable to the appellant-wife within the period of eight weeks.

.....J. (T.S. Thakur)J. (R. Banumathi) New Delhi;

October 28, 2014
