

Laxmi Bai Patel vs Shyam Kumar Patel on 28 February, 2002

Equivalent citations: JT2002(3)SC409, AIRONLINE 2002 SC 257, (2002) 2 BLJ 665, (2002) 44 ALL CRI C 1102, (2002) 2 EAST CRI C 293, (2002) 2 ALL CRI R 1257, (2002) 2 HINDU LR 695, (2002) 4 ALL CRI LR 582, (2002) 3 JT 409, (2003) SC CR R 763, (2002) 3 JT 409 (SC)

Bench: D.P. Mohapatra, Brijesh Kumar

ORDER

1. Leave granted.

2. The appellant herein is the wife of the respondent. She has challenged the order dated 2.8.2000 of the High Court of Madhya Pradesh in miscellaneous criminal case No. 2472 of 1999. In the said order, the High Court in exercise of power under Section 482 of the Criminal Procedure Code (for short 'Cr.P.C.') quashed the order passed by the learned judicial magistrate first class, Jabalpur under Section 125 Cr.P.C. granting Rs. 250/- per month as maintenance for the wife which was confirmed by the learned 4th upper additional sessions judge, Jabalpur. From the discussions in the impugned order, it appears that the High Court interfered with the concurrent orders of the courts below mainly on two grounds; that the wife has left the matrimonial home voluntarily; and that she admitted that she was earning Rs. 50/- per day by agricultural operation. The High Court also observed that in her statement she accepted the position that her father-in-law owned no agricultural land and that her husband, who was wandering aimlessly, had no source of income.

3. Before taking up the merits of the case, it would be proper to consider the exercise of jurisdiction under Section 482 Cr. P.C. by the High Court in the facts and circumstances of the case.

In a case where the sessions court exercising revisional power under Section 397(3) Cr.P.C. has dismissed the revision petition by the aggrieved party, a second revision petition about acceptance of the same party is barred. The position is well-settled that in such a case power under Section 482 Cr.P.C. can be exercised by the High Court in rare cases and in exceptional circumstances where the court finds that permitting the impugned order to remain undisturbed will amount to abuse of process of the court and will result in failure of justice. The Court in the case of *Dharampal & Ors. v. Ramshri (Smt.) & Ors.*, , "held :"

".....Section 397(3) bars a second revision application by the same party. It is now well-settled that the inherent powers under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code. Hence, the High Court had clearly erred in entertaining the second revision at the instance of respondent 1. On this short ground itself, the impugned order of the High Court can be set aside."

4. In the case of *Deepti alias Arati Rai v. Akhil Rai & Ors.*, a similar view was taken by this Court and it was observed;

"...It should have also applied its mind to the aspect that second revision application, after dismissal of the first one by sessions court is not maintainable and that inherent power under Section 482 of the Code cannot be utilized for exercising powers which are expressly barred by the Code..."

5. In the case of *Krishnan & Anor.*

Krishnaveni & Anor., a three judge bench of this Court held that the inherent power of the High Court is not one conferred by the Code but one which the High Court already has in it and which is preserved by the Code and that the object of Section 397(3) is to put a bar on simultaneous revisional applications to the High Court and the court of sessions so as to prevent unnecessary delay and multiplicity of proceedings. This Court made the following observations in paragraph 10 of the judgment:

"Ordinarily, when revision has been barred by Section 397(3) of the Code, a person -accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is, therefore, to meet the ends of justice, or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances, to exercise the inherent power and in an appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices need to be curbed and public justice can be ensured only when trial is conducted expeditiously."

6. Therefore, the question that arises for consideration is whether on the facts and circumstances it can be said that the case made out by the petitioner before the High Court was an exceptional one in which allowing the order passed by the learned magistrate, which was confirmed by the learned 4th additional sessions judge in revision to stand, would result in abuse of the process of the court and

lead to failure of justice.

To put it differently, does the statements made by the wife that she had left the matrimonial home voluntarily and that she was earning Rs. 50/- per day by agricultural operations, disentitle her to receive maintenance from her husband?

It is our considered view that such statements without anything more would not be sufficient to deny maintenance to the wife from her husband . It is to be kept in mind that it is the responsibility of the husband to maintain his wife and wife has the right to claim maintenance so long as she stays away from the matrimonial home under compelling circumstances. The wife's right to claim maintenance under Section 125 Cr.P.C. can be denied only in the circumstances provided under Sub-section (4) of the said section. On the facts and circumstances of the case as found by the courts below the said sub-section is not attracted. Therefore, the High Court was clearly in error on upsetting the order passed by the learned judicial magistrate first class granting maintenance @ Rs. 250/- per month to the wife which was confirmed in revision by the 4th additional sessions judge. In the result, the appeal is allowed, the order dated 2.8.2000 of the High Court in miscellaneous criminal case No. 2472 of 1999 is set aside and the order dated 27.1.1998 passed by the learned judicial magistrate first class, Jabalpur in misc. criminal case No. 188 of 1997 which was confirmed by the order dated 19.2.1999 of the 4th upper additional sessions judge, Jabalpur in criminal revision No. 42 of 1998 is restored.