

Mst. Khatoon vs Mohd. Yamin on 5 January, 1982

Equivalent citations: AIR1982SC853, 1982(1)SCALE551, (1982)2SCC373, AIR 1982 SUPREME COURT 853, 1982 ALL. L. J. 360, 1982 CRILR(SC MAH GUJ) 554, 1982 CRI APP R (SC) 278, 1982 UP CRIR 272, 1982 SCC(CRI) 439, (1982) 2 APLJ 13, (1982) CHANDCRIC 123, (1982) IJR 176 (SC), (1982) LS 23, (1983) MATLR 69, (1982) ALL WC 289, (1982) GUJ LH 365, (1982) MAD LJ(CRI) 421, (1982) 1 SCJ 345, 1982 (2) SCC 373, (1982) CRILC 544, (1982) ALLCRIR 196

Bench: D.A. Desai, S. Murtaza Fazal Ali

JUDGMENT

1. This appeal by special leave is directed against the judgment of the Allahabad High Court dated 19th November, 1981 setting aside in revision an order granting maintenance to the appellant while maintaining the order of maintenance to her two sons. The High Court set aside the maintenance so far appellant Mst. Khatoon is concerned but maintained the same so far his children were concerned. After going through the judgment of the High Court we are constrained to observe that the High Court seems to have interfered purely on facts although the order passed by the Sessions Judge was quite correct in law. The appellant had applied for grant of maintenance in the Court of District Magistrate under Section 125 of the CrPC but the Magistrate refused application for maintenance on the ground that the wife refused to live with the husband without sufficient reason. In revision the Sessions Judge accepted the plea of the appellant and held that there was sufficient justification for the wife to refuse to live with the husband because the husband wrote a letter on 18th December, 1975 to the appellant asking her to come back to him otherwise the letter would be treated as a divorce. In other words the letter contained a clear threat to the wife to return to the husband on the pain of being divorced. The Sessions Judge Rightly held that such an unreasonable threat would constitute sufficient reason for the wife to refuse to live with her husband. The High Court seems to have been under the impression that as the wife after 1975, herself went and lived with the husband and thereafter returned without any reason, she was not entitled to maintenance. There is no reliable evidence to support this conclusion reached by the. High Court. It appears from the judgment of the Magistrate that the appellant had gone to the village to attend a marriage and there is nothing to show that she had actually lived with the husband and then returned. Even apart from that the very fact that the letter was couched in most discourteous terms and amounted to a clear threat to divorce the wife and sought to obtain her consent to live with him under duress, this was in our opinion a sufficient reason for the wife for refusing to live with her husband. On this ground alone the order of the Sessions Judge was fully supportable in law and the High Court erred in interfering in revision. For these reasons, therefore we are satisfied in the peculiar facts and circumstances of this case that there was sufficient reason for the wife to refuse to live with her husband. We, therefore, allow this appeal, set aside the order of the High Court n and restore the order of maintenance passed by Sessions Judge. The appellant will be entitled to costs of Rs. 500/-.