Ravendra Kaur Vs Achant Swarup

Court: Allahabad High Court

Date of Decision: Dec. 10, 1964

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€" Section 488, 488(4), 489(2)
Hindu Marriage Act, 1955 â€" Section 10

Citation: AIR 1966 All 133 : (1966) CriLJ 247

Hon'ble Judges: H.C.P. Tripathi, J

Bench: Single Bench

Advocate: R.K. Shangloo, for the Appellant; K.L. Grover, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

H.C.P. Tripathi, J.
Applicant Rabindra Kaur made an application to the Sub-Divisional Officer Sadar at Muzaffarnagar praying that the

maintenance allowance of Rs. 25 per month granted in her favour on the 2nd of March 1955 be increased to Rs. 100 as the circumstances of the

respondent had changed during the period. Respondent Achint Swarup filed a written statement before the Magistrate alleging that the Court of the

Additional Civil Judge, Muzaffarnagar had granted him a decree for judicial separation from the applicant and, therefore, the maintenance

allowance which had been grunted to the applicant earlier was not payable. He also filed a copy of the decree passed by the Court showing that he

was allowed judicial separation from the applicant. On these facts the learned Magistrate rejected the application of Rabindra Kaur for enhancing

her maintenance allowance and also passed an order cancelling his previous order of the 2nd of March 1955 granting her a maintenance

allowance,

2. On revision the learned Sessions Judge was of the opinion that the view of law taken by the Magistrate was incorrect and that it was not legal on

his part to have set aside his previous order allowing maintenance to the applicant. He has, therefore, referred the case to this Court for setting

aside the order of the Magistrate.

3. I have heard learned counsel for the parties.

4. Judicial separation can be obtained by either party to a marriage inter alia also on the ground that the other party has deserted him or her for a

continuous period of not less than two years immediately preceding the presentation of the petition u/s 10 of the Hindu Marriage Act of 1955. The

allegation made by the opposite party before the Magistrate was that he had obtained the decree for indicial separation on this ground. It is no

doubt true that it was an ex parte decree but although the learned counsel for the opposite party was allowed time for the purpose, he has not been

able to state that the opposite party had filed any application within time for setting aside that ex parte decree.

5. Sub-section (4) of Section 488, Cr. P. C. provides that no wife shall be entitled to receive an allowance from her husband. . . . if without any

sufficient reason she refuses to live with her husband. It is, therefore, clear that in view of the decree passed by the Civil Court granting judicial

separation to the opposite party, the applicant cannot be held entitled to receive maintenance allowance from him and under the law it was the duty

of the Magistrate to have noticed the decision of the Civil Court as provided under Sub-section (2) of Section 489 of the Code even though there

was no specific application under that section before him. In my opinion, the view of the law taken by the Magistrate is absolutely correct and the

contrary observation made by the learned Sessions Judge is erroneous.

6. I am supported in this view of law by a decision of this Court in the case of Sharda Prasad Vs. Emperor .

7. Learned counsel for the applicant relied on a single Judge decision of the Madras High Court in the case of Mailappa Chettiar Vs. Sivagami

Achi, in which it was held that the mere fact that the civil Court had given an inconsistent finding is by itself no sufficient ground to cancel the order

of maintenance made by the criminal Court. With respect I differ from that view and accept the view taken by this Court in the case referred to

above.

8. The reference made by the learned Sessions Judge is, therefore, rejected.