

Ajad Khan Vs Aasmabi and Others

Criminal Revision No. 11 of 1992

Court: Madhya Pradesh High Court

Date of Decision: Sept. 13, 1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 125, 482

Citation: (1996) 2 DMC 213

Hon'ble Judges: Chaudhary Prasad, J

Bench: Single Bench

Advocate: A. Salim, for the Appellant; Bhagwan Singh, for the Respondent

Final Decision: Dismissed

Judgement

Chaudhary Prasad, J.

The non-applicants i.e. the wife and the children of the applicant filed an application u/s 125 of the Code of Criminal

Procedure for grant of maintenance before the J.M.F.C., Kannod. The learned Magistrate, by his order dated 27.12.1989 passed in Criminal

Case No. 22/86 dismissed the application. Aggrieved by the aforesaid order, the non-applicants filed Criminal Revision No. 8 of 1990 and the

Second A.S.J., Dewas / by order dated 28.10.1991 partly allowed the revision-application and directed for grant of maintenance to the minor

children non-applicants 2 and 3 at the rate of Rs. 150/- each per month from 27.12.1989 i.e. from the date of the order passed by the learned

Magistrate. Aggrieved by the revisional order the non-applicants has filed this revision u/s 482, Cr.P.C.

2. According to non-applicant 1, Aasmabi, she is the legally married wife of the applicant and the non-applicants Nos. 2 and 3, Imran Khan and

Aslam Khan, are their legitimate children. The applicant was earlier married to one Sabiyabi and as there was no issue from the said wedlock he

again married non-applicant No. 1 and gave birth to two children. These facts are not under dispute.

3. According to the non-applicant No. 1 when the applicant married Aasmabi, he had already deserted his first wife Sabiyabi and the applicant has

assured her that he will divorce Sabiyabi. According to the non-applicant 1, when she became pregnant the second time, three months before the

expected date of delivery she used to be assaulted by the applicant, as was subjected to cruelty. The applicant further used to threaten her that he

will bring back his first wife Sabiyabi and during her pregnancy, she was forcibly removed and sent to her father's place. According to the non-

applicant No. (sic) his father was insane so she went to her grand-father's place, where she delivered the child. After the delivery, the applicant did

not permit her to enter the house and force her to leave the place. Thereafter, the applicant has started living with his first wife Sabiyabi and no

provisions for maintenance has been made for her or her children. In the aforesaid premises, prayer was made for grant of maintenance at the rate

of Rs. 500/- per month.

4. The applicant has denied the allegation of ill-treatment, assault or desertion of his wife and according to him the non-applicant No. 1 voluntarily

left him and living with her grand-father.

5. The learned Magistrate as well as the Revisional Court concurrently held that the non-applicant No. 1 voluntarily left her matrimonial home and

rejected her prayer for grant of maintenance. No application has been preferred by her against the aforesaid finding and order of the Courts below

and the same has become conclusive. However, the Revisional Court on analysis of the evidence on record held that the minor children i.e. the

non-applicant Nos. 2 and 3 are entitled for grant of maintenance.

6. It is not disputed that the non-applicant Nos. 2 and 3 are legitimate children of the applicant and he has an obligation to maintain them.

According to the finding of the Revisional Court, non-applicant Nos. 2 and 3 were not maintained by the applicant and, therefore, the applicant

was liable to pay maintenance to them.

7. Mr. A. Slaim, appearing on behalf of the petitioner could not point out any infirmity in the aforesaid finding of the Revisional Court. In the result,

I do not find any merit in the application and it is dismissed accordingly.