

Court No. - 80

Case :- CRIMINAL MISC. WRIT PETITION No. - 4666 of 2003

Petitioner :- Smt. Sarita Tiwari

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Umesh Vats,A.K.Chaturvedi,Abdul Mazeed,B.K. Chaturvedi,B.N. Singh,R.K. Upadhyay

Counsel for Respondent :- Govt. Advocate,Alok Kumar Srivastava,B.K. Srivastava,K.B.Srivastava,Kr.Ashutosh Srivastava

and

Case :- CRIMINAL MISC. WRIT PETITION No. - 6502 of 2003

Petitioner :- Gyan Prakash

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Aalok Kumar Srivastava

Counsel for Respondent :- Govt. Advocate,B.N. Singh,Rakesh Kumar Upadhyay

Hon'ble Subhash Chandra Sharma,J.

Since both the petitions are related to the same subject matter and same order passed by the learned revisional court, therefore, are being decided with common order.

Heard learned counsel for the petitioners, learned counsel for the opposite party as well as learned A.G.A. for the State and perused the material on record.

The writ petition No. 4666 of 2003 has been filed with the following prayers:-

(i) A writ, order or direction in the nature of certiorari quashing the judgment passed by the learned Judicial Magistrate, Court No. 11, Deoria dated 11.03.2003 and judgment passed by learned Additional District Judge, Court No. 4 Deoria, dated 09.07.2003 be quashed to the extent of the amount of the maintenance only awarded by the court below.

(ii) A writ, order or direction in the nature of mandamus commanding direction the respondent No. 2 to pay Rs. 2,000/- per month as maintenance allowance to the petitioner from the date of application under Section 125 of Cr.P.C.

and

The writ petition No. 6502 of 2003 has been filed with the following prayers:-

(i) A writ, order or direction in the nature of certiorari quashing the impugned judgment and orders dated 09.07.2003 passed by Additional District Judge Court No. 4 Deoria so far as it is against the petitioner in Revision No. 42 of 2003 (Gyan Prakash Vs. Smt. Sarita Tiwari) and judgment and order dated 11.03.2003 passed by learned Judicial Magistrate, Court No. 11, Deoria in criminal miscellaneous application No. 52 of 1999 u/s 125 Cr.P.C.

(ii) Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

Facts in brief are that the petitioner Smt Sarita Tiwari was wedded to respondent No. 2 Gyan Prakash Tiwari. Her marriage was performed on 29.02.1992 and *Gauna* was performed on 26.02.1993. She came into the house of her husband where she was maltreated by her husband and other members of his family, as a result she came back to her father's house and she was not brought back by her husband to her Sasural. No money was given by the husband to the wife for maintenance during the period she lived at her house, as a result an application under Section 125 Cr.P.C. was filed before the learned court of Magistrate which was decided by order dated 11.03.2003 and her claim for maintenance was accepted partly to the extent of Rs. 800/- per month from the date of application that was on 12.04.1999. Being aggrieved with the aforesaid order criminal revision No. 42 of 2003 was filed before the learned court of Session by the husband Gyan Prakash Tiwari for setting aside the order and other criminal revision No. 46 of 2003 was filed by the wife Smt Sarita Tiwari for setting aside the order passed by learned Magistrate and to enhance the amount. The learned revisional court allowed the criminal revision No. 42 of 2003 partly and the amount of maintenance Rs. 800/- were reduced to Rs. 400/- per month and criminal revision No. 46 of 2003 filed by the petitioner Smt Sarita Tiwari was dismissed. Being aggrieved with the order passed by learned revisional court on 09.07.2003 this criminal writ petition under Article 226 of the Constitution of India was filed by Smt Sarita Tiwari before this Court and other criminal miscellaneous writ petition No. 6502 of 2003 was filed before this Court by Gyan Prakash Tiwari against the present petitioner (wife).

It is submitted by learned counsel for the petitioner that in this case Rs. 800/- were awarded as maintenance by the learned court below which were reduced to the extent of Rs. 400/- by the learned revisional court which cannot be said to be proportionate and lawful in view of the income of the husband/ respondent. Admittedly, the respondent was working in St. Vinoba Bhave Post Graduate College as Computer Instructor and was getting Rs. 10,000/- but the learned court concerned accepted the income of the respondent as such and determined the amount Rs. 800/- per month as maintenance which was not more than sufficient but it was less. The learned revisional court accepted the income of the revisionist as Rs. 1800/- per month on the basis of his income being Rs. 75/- per day as private worker and reduced the amount from Rs. 800/- to Rs. 400/- which cannot be said to be in proportion to the status of husband and wife. The respondent was an able person and liability to maintain his wife was on him as per provisions contained

under Section 125 Cr.P.C. There was no any liability on the respondent to bear because at that time there were no any issue from the wedlock. Parents of the respondent were self-dependent and they were not living on the income of the respondent. In this way, the amount as determined by learned court below cannot be said to be more than sufficient but the reduction of amount by the learned revisional court to the extent of Rs. 400/- is much less than required for maintenance of wife. In this way, the order passed by learned revisional court cannot be said to be lawful and in conformity with law, therefore, request to set it aside and direct the respondent to make payment of Rs. 2,000/- per month as prayed by her.

In respect to petition No. 6502 of 2003, he submitted that the amount as determined by learned Magistrate as well as the learned revisional court cannot be said to be more than need for maintenance of the wife but it is too less, therefore, the order passed by learned revisional court cannot be said to be lawful for reducing the amount of maintenance from Rs. 800/- to Rs. 400/-.

Learned counsel for the respondent controverted the argument as aforesaid and contended that at that time the respondent was working as private person in St. Vinoba Bhave Post Graduate College as Computer Instructor and was getting Rs. 75/- per day. In this way, the monthly income was decided as Rs. 1800/- by the learned revisional court which was correct and proportionately the amount was reduced from Rs. 800/- to Rs. 400/- in view of the liability of the respondent for maintenance of his parents and other domestic/ individual expenses. In this way, the order passed by learned revisional court cannot be said to be illegal and inappropriate.

On considering facts and circumstances of the case, contentions made by learned counsel for both the parties as well as learned A.G.A. and perusal of record, including the orders passed by learned Magistrate as well as the learned revisional court indisputably petitioner and the respondent both were married husband and wife. There was no any issue from the wedlock at that very time. The wife was living separately from her husband and did not remarry and the liability to maintain her was on respondent husband. Admittedly, he was working as Computer Instructor in St. Vinoba Bhave Post Graduate College and getting Rs. 75/- per day on the basis of which Rs. 1800/- per month income was assessed by the learned revisional court out of which Rs. 400/- monthly allowance as maintenance was accepted on the place of Rs. 800/- which was determined by the learned Magistrate. In view of the status of the petitioner and the respondent husband the amount of Rs. 800/- as maintenance per month for the wife cannot be said to be excessive.

As a result the order passed by the learned revisional court is hereby set aside and the order passed by the learned Magistrate is restored.

In this way, the reduction of amount from Rs. 800/- to Rs. 400/- by the learned revisional court cannot be said to be proportional, lawful and appropriate therefore

the petition No. 4666 of 2003 filed by Smt Sarita Tiwari is hereby ***allowed*** and petition No. 6502 of 2003 being devoid of merit is ***dismissed***.

Order Date :- 20.11.2023

Suraj Srivastav