

CASE NO.:
Appeal (crl.) 126 of 2008

PETITIONER:
Ahilyabai

RESPONDENT:
Mehtarwan Singh

DATE OF JUDGMENT: 15/01/2008

BENCH:
S.B. SINHA & V.S. SIRPURKAR

JUDGMENT:
JUDGMENT

ORDER

CRIMINAL APPEAL NO. 126/2008
(@SLP(Crl.) No.5273 /2006)

Leave granted.

The parties hereto were married in the year 1978-79. The 'Gauna' ceremony was solemnized in the year 1982. Allegedly, on the plea that the appellant had not joined her matrimonial home in the year 1997, respondent contracted a second marriage with Lalitabai during the subsistence of the first marriage.

In the year 2002 she filed an application for grant of maintenance in terms of Section 125 of the Code of Criminal Procedure. The learned Magistrate allowed the said application directing grant of maintenance @ Rs. 1,000/- per month. Respondent filed a revision application thereagainst. The Revisional Court set aside the said order opining as under:

-1-

"....that helps the revisionist wherein it has been laid down that if the husband does not disregard the wife nor does he denies to maintain her and despite three letters calling her to join matrimonial home, if the wife refuses to live with her husband and if after enough time the husband marries second time, the wife is not entitled for maintenance u/s 125 Cr.P.C. if Rs. 150 demanded as maintenance for the son one is not entitled for Rs. 200 per month maintenance. In this regard Kamlabai Vs. Gajand 1984 MPWN 170 is also considerable."

It was concluded:

" From the finding on issue No.1 & 2 it is apparent that the applicant cannot be considered eligible to seek maintenance. Therefore, the maintenance as granted by the court below cannot be considered appropriate. For these reasons the Revision Petition is acceptable. Therefore, the impugned order dated 27.10.2004 as passed by the court below is set aside. Copy be sent to the concerned Court. Record of the court

below be returned."

By reason of the impugned judgment, the High Court has refused to interfere with the revisional order holding that the jurisdiction of the High Court is limited.

Having heard learned counsel for the parties, we are of the opinion that in view of the admitted fact that the respondent had contracted a second marriage in terms of explanation appended to Sub-section 3 of Section 125 of the Code of Criminal Procedure, appellant was entitled to claim maintenance from her husband although she had refused to live with him.

-2-

The High Court while declining to exercise its revisional jurisdiction failed to notice that the first revisional Court was also exercising the same jurisdiction.

For the reasons aforementioned, the impugned judgment in Cr.Revision No. 766/2005 dated 8.12.2005 of the High Court as also order dated 25.6.2005 passed by the Sessions Judge are set aside. The order dated 27.10.2004 passed by the learned Magistrate is restored.

The appeal is allowed.