

Allahabad High Court

Anita Rani vs Rakeshpal Singh on 15 March, 1991

Equivalent citations: II (1991) DMC 192

Author: S Bhargava

Bench: S Bhargava

JUDGMENT S.R. Bhargava, J.

1. Parties to this revision are husband and wife. Smt Anita Rani, wife, revisionist filed application for maintenance under Section 127 Cr. P.C. on 2nd January, 1987 on the grounds of cruelty and desertion. She alleged that her husband has 13 acres of land along with his parents and lives with them jointly. She further alleged that husband has one acre of land of his own. He owns a pneumatic wheeled cart and carries on business of giving the cart on hire. She further alleged that her husband carries on business of selling milk. Husband-opposite party opposed the application. He denied allegations of cruelty and desertion. He contended that he has only three bighas of land. Learned Magistrate rejected the case of cruelty and desertion of the wife and dismissed the application for maintenance. Wife preferred revision. Sessions Judge accepted the grounds of cruelty and desertion. He found that the husband admitted that he has three bighas of land from which he has income of Rs. 300/- per month. Hence the learned Sessions Judge granted maintenance of Rs. 100/- per month to the wife payable on 15th of every month the first Instalment being payable on 15th June, 1989.

2. The order of the Sessions Judge is dated 5th May, 1989. This means that the Sessions Judge granted maintenance to the wife from the date of order.

3. Wife has preferred this revision on two grounds, namely, (1) that she is entitled to higher amount of maintenance and (2) that she should have been granted maintenance from the date of her application.

4. Notice was issued to the husband. He has not turned up to contest the revision. Lower Court record has been examined. It is evident from the statement of the wife recorded by the Magistrate that she stated that husband has earning from 13 acres of joint land, that husband has one acre land of his own that husband owns a pneumatic wheeled cart which he plies on hire that husband carries on milk business. From the written statement of the husband and admission emerges that he has three bighas of land from which he has income of Rs. 300/- per month. In his statement on oath husband did not deny that he runs pneumatic wheeled cart on hire and that he carries on business of selling milk. On these circumstances, the uncontroverted testimony of the wife should have been accepted that her husband has three bighas of land from which he has monthly income of Rs. 300/- and that her husband owns a pneumatic wheeled cart which he runs on hire and also carries on business of selling milk. In these circumstances, the income of the husband cannot be estimated to be less than Rs. 500/-. Husband did not file any revision against the order of the Sessions Judge. Hence Kb cannot be permitted to argue that he did not commit cruelty or that he did not desert the wife. Considering the estimated income of the husband, i.e., Rs. 500/- per month, the wife is entitled to maintenance of Rs. 250/- per month. It is true that under Section 125(2) Cr. P.C. maintenance can be allowed from the date of the order, or if so ordered, from the date of application

for maintenance. Allowing of maintenance from the date of application is an exception to the general rule of maintenance being payable from the date of order, for making an exception there must be reasons. It do not find any specific reason for allowing the maintenance right from the date of application.

5. Hence, in result, this revision is partly allowed. Maintenance payable to the "wife froj the date of the order of the Sessions Judge dated 5.5.1989 is enhanced to Rs. 250/- per month.

6. A copy of the order be issued to the learned counsel for the revisionist on payment of usual charges.