

(7) For the reasons aforesaid, the writ petition is allowed and the impugned orders dated November 17, 1986 and December 30, 1986 are quashed. Respondent No. 2 is directed to grant the benefit of military service towards seniority to the petitioner within three months from the date of receipt of the copy of this order. No order as to costs.

R.N.R.

Before S. S. Grewal, J.

ARUN KUMAR SHARMA,—*Petitioner.*

versus

SMT. RAMA SHARMA AND ANOTHER.—*Respondents.*

Criminal Misc. No. 8676-M of 1990.

30th October, 1990.

Code of Criminal Procedure, 1973 (II of 1974)—Ss. 397 & 482—Petitions filed under S. 482 and not under S. 397—Specific bar against second revision as contemplated under S. 397(3) of Cr. P.C.—Not applicable to facts of present case.

Held, that both the present petitions have been filed under S. 482 of the Code of Criminal Procedure and not under S. 397 of the Code and apparently specific bar against second revision as contemplated under sub-section (3) of S. 397 of the Code would not be applicable to the facts and circumstances of the present case.
(Para 6)

(2) *Code of Criminal Procedure, 1973 (II of 1974)—S. 125—Husband had been paying interim maintenance to wife—Revisional court granted maintenance from date of application—Wife not specifically pleaded that husband responsible for delaying proceedings for grant of maintenance—Order granting maintenance from date of application set aside.*

Held, that a careful perusal of the orders of the revisional Court in the instant case clearly indicates that neither it was specifically pleaded on behalf of the wife that the husband was responsible for delaying the proceedings for grant of maintenance under S. 125 of the Code, nor any justifiable reason for directing the order of maintenance to be awarded from the date of the application was given by the revisional Court. The reason advanced in the instant case by the said Court that in case the maintenance allowance is allowed from the date of order, it would be encouraging the husband to prolong the agony of the neglected wife in facts and circumstances of the present case, cannot be considered to be such a justifiable and

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cogent reason for awarding the maintenance from the date of the application, particularly when the husband had been paying the interim maintenance to his wife during the pendency of the petition under S. 125 of the Code as observed by the trial Court in its judgment. (Para 8)

Petition under section 482 C. P. C. praying that the petition may kindly be accepted and the impugned judgments and orders of the Courts below be set aside and the application of the respondent for maintenance be dismissed with costs throughout.

K. G. Chaudhary, Advocate, for the Petitioner.

Kasturi Lal, Advocate, for the Respondent.

ORDER

S. S. Grewal, J.

(1) On application under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) for grant of maintenance moved by Smt. Rama Sharma (hereinafter referred to as the wife) on her own behalf and on behalf of her minor daughter Geetika, Judicial Magistrate 1st Class, Ludhiana,—*vide* his order dated 9th June, 1989 awarded maintenance allowance at the rate of Rs. 500 per month for the wife, and, at the rate of Rs. 200 per month for her minor daughter Geetika with effect from the date of the said order against Arun Kumar Sharma (hereinafter referred to as the husband). Both the parties filed revision petitions against the aforesaid order passed by the trial Magistrate and the learned Additional Sessions Judge, Ludhiana, partly allowed the revision petition filed by the wife on her own behalf and on behalf of her minor daughter and granted maintenance allowance from the date of the application before the trial Magistrate, whereas, the revision filed by the husband for setting aside the order for grant of maintenance was dismissed.

(2) Aggrieved against the order passed by the Additional Sessions Judge, Ludhiana, the husband filed two petitions under Section 482 of the Code i.e. the present petition and Crl. M. No. 8678-M of 1990. Since common question of law and fact are involved both these petitions shall be disposed of by one order.

(3) In brief facts relevant for the disposal of this petition are that the marriage between the parties was solemnised on 14th April, 1982 and out of the said wedlock their daughter Geetika was

born on 30th August, 1983. Parents of the wife gave sufficient dowry and Istridhan at the time of marriage. However, the husband and the latter's parents were not satisfied with the dowry brought by the wife. All of them started maltreating her for bringing inadequate dowry. After Geetika was born, the husband and his relations used to maltreat the wife more often. She was given beating by her husband daily. Bram Dutt wife's brother came to see her after about six months of the birth of her daughter and came to know that his sister was treated with cruelty by her husband and her in-laws. He took her along with him. Thereafter at the intervention of respectables, the wife again started living with her husband but her husband and her in-laws again maltreated her. After about six months the wife was again turned out by her husband. After another six months at the intervention of the respectables she again came to the house of her husband and started living there. The behaviour of her husband and his other family members did not change and apprehending danger to her life, the wife left the house along with her daughter. It was further pleaded by the wife that she has no source of income of her own, whereas, her husband runs a shop of a Chemist in Samrala Chowk, Ludhiana, under the name and style of M/s New Suraj Medical Hall and earns Rs. 5,000 per month.

(4) The husband in his written statement admitted the factum of his marriage and the birth of his daughter Geetika. The allegations that he and his parents maltreated the wife were denied. Rather it was pleaded that his relations with his wife were not cordial from the date of the marriage as she wanted to live separately from his parents. He did not agree and on that account his wife started showing disrespect towards him and his parents. After picking up quarrel with him and his parents she left his house. While going away she took away her gold ornaments and Rs. 5,000 which was lying in his house. It was further pleaded that he was always ready and willing to keep and maintain his wife and daughter according to his status. It was also pleaded that he filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights which was pending in the Court of Additional District Judge, Ludhiana. It was further pleaded that the wife does tuition work and she earns Rs. 400/500 per month. Besides, she had golden jewellery and Rs. 5,000 whereas his own income was not more than Rs. 700/800 per month.

(5) The learned counsel for the parties were heard.

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(6) On behalf of the wife objection was raised that second revision petition by the husband against the order of the Additional Sessions Judge, was not maintainable. Both the present petitions have been filed under Section 482 of the Code and not under Section 397 of the Code and apparently specific bar against second revision as contemplated under Sub section (3) of Section 397 of the Code would not be applicable to the facts and circumstances of the present case. I am supported in my view by Division Bench authority of this Court in *Charanjit Singh and others v. Smt. Gursharan Kaur* (1), wherein it was observed that the provisions of Section 397 of the Code do not constitute or operate as a bar to the exercise by the High Court of its inherent powers under Section 482 of the Code. It was further observed in the aforesaid authority that where an order is amenable to revision the order of the revisional Court should be interfered with very sparingly and that too only for the purposes as envisaged by Section 482 of the Code.

(7) The learned counsel for the husband did not contest the finding of the learned trial Court concerning grant of maintenance to his wife and his daughter, presumably in view of the finding of the Courts below that the husband had maltreated his wife and had neglected to maintain her and their daughter and there was sufficient cause for the wife to withdraw from the society of her husband. It was submitted on behalf of the husband that the Additional Sessions Judge, in revision has erred in granting maintenance to the wife and the daughter from the date of application without giving any cogent reason. Reliance in this respect was placed on Single Bench authority of this court in *Rulia Singh v. Smt. Kartaro* (2), wherein the order of the Additional Sessions Judge granting maintenance from the date of the application was set aside on the ground that there are no allegations on behalf of the wife that such proceedings before the trial Magistrate were delayed because of any laches on the part of the husband. Reliance was further placed by the counsel for the husband on another Single Bench authority of this Court in *Arun Kumar v. Kamlesh Kumari* (3), wherein it was observed that maintenance can be granted from the date of application when there are circumstances justifying the same.

(1) 1990 Criminal Law Journal, 1264.

(2) 1990 (1) Recent Criminal Reports 77.

(3) 1989 (1) Recent Criminal Reports 233.

(8) A careful perusal of the orders of the revisional Court in the instant case clearly indicates that neither it was specifically pleaded on behalf of the wife that the husband was responsible for delaying the proceedings for grant of maintenance under Section 125 of the Code, nor, any justifiable reason for directing the order of maintenance to be awarded from the date of the application was given by the revisional Court. The reason advanced in the instant case by the said Court that in case the maintenance allowance is allowed from the date of order, it, would be encouraging the husband to prolong the agony of the neglected wife in facts and circumstances of the present case, cannot be considered to be such a justifiable and cogent reason for awarding the maintenance from the date of the application, particularly when the husband had been paying the interim maintenance to his wife during the pendency of the petition under Section 125 of the Code, as observed by the trial Court in its judgment.

(9) For the foregoing reasons, both the petitions are partly allowed and the order of the Additional Sessions Judge, Ludhiana, granting maintenance to the wife and daughter against the husband from the date of the application is set aside and that of the trial Magistrate granting maintenance to them from the date of order is hereby restored.

J.S.T.