

Before M. M. Punchhi, J.

SAMPURAN SINGH,—Petitioner

versus

GURDEV KAUR AND ANOTHER,—Respondents.

Criminal Revision No. 1562 of 1983.

January 17, 1985.

Code of Criminal Procedure (II of 1974)—Section 125—Decree for restitution of conjugal rights passed in favour of the husband—Application for maintenance filed by wife and minor son dismissed on account of aforesaid decree—Judgment of the Court in an earlier litigation between husband and wife to the effect that the husband was keeping another woman and had sired a child—Such conduct of husband—Whether bars the wife and child from claiming maintenance merely on the existence of the aforesaid decree.

Held, that the husband by keeping another woman in the house whether legally wedded wife or not and siring a son from her was obviously barred by his conduct from estopping the wife to claim maintenance merely on the existence of a decree of restitution of conjugal rights in favour of the husband. As such the Court is well within its rights to mould the relief and in accordance therewith encash the supervening event to the advantage of the wife by granting maintenance under section 125 of the Code of Criminal Procedure, 1973.

(Para 3).

Petition under section 401 of Criminal Procedure Code for revision from the order of the Court of Shri O. P. Dharwal, Additional Sessions Judge, Ludhiana, dated the 27th day of October, 1983, reversing that of Shri Gurdarshan Kumar Rai, PCS, Judicial Magistrate I Class, Ludhiana, dated the 4th day of November, 1981 convicting & sentencing the petitioner.

Gurbachan Singh, Advocate, for the Petitioner.

R. S. Ahluwalia, Advocate, for the Respondents.

JUDGMENT

M. M. Punchhi, J. (Oral)

(1) The revision-petitioner is the husband. The respondent his wife, named Gurdev Kaur—for herself and for her minor son Sunder

Singh claimed maintenance under section 125, Criminal Procedure Code, from him before the learned Judicial Magistrate Ist Class, Ludhiana. The learned Magistrate, after taking into consideration the evidence led, held that both the wife and her minor son were not entitled to maintenance. The main reason for refusal which prevailed with the learned Magistrate was judgment Exhibit D-1 inter-partes. That was in proceedings under section 9 of the Hindu Marriage Act for restitution of conjugal rights instituted by the husband successfully. In the presence of the decree for restitution of conjugal rights against the wife, she obviously had no right to maintenance. This is well settled by a string of precedents. In this connection see *Joginder Singh v. Dalbir Kaur alias Balbir Kaur*, (1) *Smt. Jito v. Shri Buta*, (2) and *Raghubir Singh v. Krishna* (3). However, the rule laid down therein though apparently absolute has a qualification. The wife can still claim maintenance in the presence of a decree for restitution of conjugal rights against her if the conduct of the husband is such which obstructs her to obey such a decree, and the presence of another woman in his house as his wife or mistress is obviously a valid ground for her to remain away from him and yet being a destitute to claim maintenance.

(2) In the instant case, after having failed before the learned Magistrate, the wife as also her minor son filed a revision petition before the Court of Session at Ludhiana. The order of the learned Additional Sessions Judge now sought to be revised—allowed her claim as also that of the minor son on the ground that there was a judgment inter-partes between the husband and the wife under the Guardians and Wards Act passed by this Court in *Smt. Jaswant Kaur alias Gurdev Kaur v. Sampuran Singh*, (4). Therein D. S. Tewatia, J. has specifically drawn his attention to a birth certificate Exhibit RX in that case to find whether the child shown to be born therein was from the loins of the present petitioner to Smt. Bhupinder Kaur, his alleged second wife. The two questions posed by Tewatia, J. are forthcoming in paragraph 7 of the report and those were whether, in fact, the child mentioned in Exhibit RX was born to the lady named therein as mother from the loins of Sampuran Singh (the present petitioner herein), and whether that woman the mother of the child, was his legally married wife.' The questions

- (1) 1980 P.L.R. 665.
- (2) 1981 P.L.R. 325.
- (3) 1982 P.L.R. 768.
- (4) 1983 H.L.R. 177.

State of Punjab and others v. Tejbir Singh (P. C. Jain, C.J.)

were answered in this manner—

“I, therefore, on the basis of the evidence adduced on the record of this case unhesitatingly hold that the respondent (the petitioner herein) did have a child from one Bhupinder Kaur whether after contracting a legal marriage with her or otherwise. Whether Sampuran Singh had actually married Bhupinder Kaur or was living with her without marriage, both ways it will detract from his claim to the custody of the child.”

(3) In view of the aforesaid finding, at least one fact was clear that the petitioner by keeping another woman in his house, whether legally wedded wife or not, and siring a son from her, was obviously barred by his conduct from estopping the wife to claim maintenance merely on the existence of a decree of restitution of conjugal rights in his favour. It is clear that the learned Additional Sessions Judge, Ludhiana, committed no illegality in taking the aforesaid judgment into consideration for, it was an event which had supervened while the claim for maintenance was pending. The Court was well within its rights to mould the relief and in accordance therewith encash the supervening event to the advantage of the wife.

(4) For the foregoing reasons, I find no merit in the plea as raised. Since no other point has been raised, this petition fails and is hereby dismissed.

H.S.B.

Before P. C. Jain, A.C.J. & I. S. Tiwana, J.

STATE OF PUNJAB AND OTHERS,—Appellants

versus

TEJBIR SINGH,—Respondent.

Letters Patent Appeal No. 838 of 1983.

January 22, 1985.

*Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—
Sections 21 and 35—Punjab Civil Services (Punishment and Appeal)
Rules, 1952—Rule 8—Block Development and Panchayat Officer*