Hazara Singh and another v. The State

Harbans Singh, J.

There can be no manner of doubt that if a railway servant is off duty and during that period, in his capacity as a private individual, he commits an act which falls under section 120 of the Railways Act, he would certainly be liable and this appears to be the case in *M. Venkataswami's case* (6). However, I am inclined to prefer the view taken by Beaumont, C.J. in *Gurunath Shanker's case* (4) following the Sind Judicial Commissioner's view in *Mulchand's case* (3), followed by Allahabad High Court in *Vishwanath Pandey's case* (5), and would hold that section 120 of the Railways Act is not applicable to the acts of a railway servant while he is on duty and is acting as such.

This was the only point in the reference. It is, therefore, not necessary to send the case back to the learned Single Judge. I would, consequently, accept the revision, quash the proceedings and set aside the convictions and sentences of the petitioner and Dalip Singh. Fine, if paid, shall be refunded.

Falshaw, C.J.

D. FALSHAW, C.J.—I agree.

B.R.T.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

KARAM SINGH,—*Appellant*

versus

DALJIT KAUR,—*Respondent*

First Appeal From Order No. 64(M) of 1961

1962

Dec. 7th

Hindu Marriage Act (XXV of 1955)—S. 25—Decree for restitution of conjugal rights passed against wife—Application for maintenance by wife on the ground that her husband did not take her back after the decree—Whether maintainable.

Held, that in section 25 of the Hindu Marriage Act, 1955, it is not mentioned that an order under this section can only be passed if a decree either for judicial separation or for divorce was passed. The words "at the time of passing any decree" clearly indicate that the power to grant permanent maintenance can be exercised after the passing of a decree either for restitution of conjugal rights or for judicial separation or for divorce. It is not correct to say that the maintenance can be granted only when a decree for judicial separation or divorce is granted, because the effect of the non-compliance with the decrees of judicial separation and restitution of conjugal rights is the same, as divorce can be granted after the expiry of a period of two years in both cases. It is only in those cases where a decree for divorce is granted that the marriage between the two spouses is dissolved immediately.

Held, that under section 25 of the Act the application can be made by both the wife and the husband when a decree has been passed under the Act. It does not matter at whose instance that decree had been obtained. The application by the wife for maintenance is competent under section 25 of the Act and she cannot be deprived of this right on the ground that she should make application under section 18 of the Hindu Adoption and Maintenance Act, 1956, or file a suit on the basis of the compromise.

First Appeal from order of the Court of Shri Rajinder Lal Garg, Sub-Judge, 1st Class, Moga, dated 14th February, 1961, ordering Karam Singh to pay Rs. 50 per mensem to Daljit Kaur till her death and so long as she remains unmarried.

DALJIT SINGH, ADVOCATE, for the Appellant.

NATOTAM SINGH, ADVOCATE, for the Respondent.

JUDGMENT

Pandit, J.

PANDIT, J.—This is an appeal by Karam Singh against the order of the learned Subordinate Judge, 1st Class, Moga, granting the application of his wife, Shrimati Daljit Kaur, under section 25 of the Hindu Marriage Act, 1955 (hereinafter referred to

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as the Act) and awarding Rs. 50 per mensem as maintenance to her till her remarriage or death.

The facts are not in dispute. It is common ground that the parties were married in 1949 and no child was born to them. The relations between them became strained and Shrimati Daljit Kaur had to file an application for maintenance against him under section 488, Criminal Procedure Code. After the filing of this application, Karam Singh applied for restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955. It appears that both these matters were compromised through the Panchayat and a decree was passed for restitution of conjugal rights on 17th June, 1960 and the application under section 488, Criminal Procedure Code, was withdrawn by the wife. According to the compromise, the husband had to go to the house of his in-laws and fetch his wife therefrom. The present application was filed by the wife on 17th November, 1960 on the allegations that her husband had not come to take her back. It was also stated that the Court had appointed Shri Jasbir Singh as a Local Commissioner to see that the husband came to the house of the wife's father to fetch her. The Local Commissioner reached that house and waited for the husband for the whole night, but he never turned up. The husband had, thus, forsaken her without any reason whatsoever.

This application was contested by the husband on the ground that his wife was not entitled to any maintenance, because she had no intention to live with him. He further pleaded that he was attacked by his father-in-law and some other people and, therefore, he did not go to fetch her.

On the pleadings of the parties, the following issues were framed:—

(1) Is not the application maintainable ?

(2) To what amount of maintenance the petitioner is entitled ?

(3) Relief.

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The learned Subordinate Judge, came to the conclusion that the application under section 25 of the Hindu Marriage Act was maintainable and Shrimati Daljit Kaur was entitled to maintenace at the rate of Rs. 50 per mensem from 17th November, 1960, when the application was filed, till her death or remarriage. Against this order, the husband has filed the present appeal.

Learned counsel for the appellant has challenged the finding of the Court below only on issue No. 1. He submitted that under section 25 of the Act, maintenance could be granted only if a decree for divorce or judicial separation had been passed, because the words 'while the applicant remains unmarried' occurring in this section indicated that one of the stages when the maintenance would be stopped was the remarriage of the applicant and this was only possible if a decree for divorce or judicial separation had been granted in the case.

Admittedly, there is no decided case on this point. Learned counsel for the appellant, however, tried to derive some support from a decision of Beaumount, C.J., in *Mary Do Rozerio* v. *Ernest Do Rozario* (1), wherein it was observed that in a matrimonial suit the jurisdiction to allow alimony, which was another name for maintenance, only arose on the Court granting a decree for judicial separation. The learned Judge went on to say that until the Court determined that it ought to grant a decree for judicial separation, no question

(1) A.I.R. 1941 Bom. 372.

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of allowing alimony could arise. This case, however, does not apply to the facts of the present case and has been decided under a different Act. In section 25 of the Act, it is not mentioned that an order under this section can only be passed if a decree either for judicial separation or for divorce was passed. The words "at the time of passing any decree" clearly indicated that the power to grant permanent maintenance could be exercised after the passing of a decree either for restitution of conjugal rights or for judicial separation or for divorce. The argument of the learned counsel that the maintenance could be granted only when a decree for judicial separation or divorce was granted is without any merit, because the effect of the non-compliance with the decrees of judicial separation and restitution of conjugal rights is the same, as divorce can be granted after the expiry of a period of two years in both cases. It is only in those cases where a decree for divorce is granted that the marriage between the two spouses is dissolved immediately. There is, thus, no force in this submission.

Learned counsel then contended that the decree for restitution of conjugal rights was obtained by the appellant and, therefore, the respondent could not make an application under section 25 of the Act, because she had not obtained such a decree.

There is no force in this contention as well, because section 25 clearly lays down that both the wife and the husband can make an application under this section when a decree has been passed under the Act. It does not matter at whose instance that decree had been obtained.

Lastly, it was submitted that the wife, if she wanted maintenance, could either take recourse

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to the provisions of section 18 of the Hindu Adoption and Maintenance Act (No. 78 of 1956) or file a suit on the basis of the compromise, which resulted in the decree for restitution of conjugal rights.

There is no merit in this submission also, because when the Act provides her with a particular remedy, she cannot be debarred from availing of the same, even though other remedies might be open to her. There is nothing in the provisions of this Section to compel her to seek redress, in the first instance, under some other provisions of law.

No other point was urged before me.

The result is that this appeal fails and is dismissed with costs.

B.R.T.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

CHHITTAR KHAN AND OTHERS,—*Appellants*

versus

THE UNION OF INDIA AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 1285 of 1989.

1962

Dec. 13th

Administration of Evacuee Property Act (XXXI of 1950)—S. 16—Administration of Evacuee Property (Central Rules), 1950—Rule 15-B—Application by an heir of a person, who never migrated to Pakistan but whose property was declared evacuee, to restore the property to him—Whether maintainable—Rejection of such application by the Central Government—Whether affords cause of action for a suit to establish his title—Limitation for such a suit—Allottees of such property—Whether necessary parties to the suit.