

REVISIONAL CRIMINAL

Before Gopal Singh, J.

AMAR NATH,—Petitioner.

versus

LAKHSMI DEVI, ETC.,—Respondents.

Criminal Revision No. 494 of 1970.

January 12, 1971.

Code of Criminal Procedure (V of 1898)—Section 498(1)—Hindu Marriage Act (XXV of 1955)—Section 9—Decree for restitution of conjugal rights passed in favour of husband before an order for maintenance under section 488(1)—Wife refusing to abide by the decree—Such decree—Whether operates as a bar against the wife to claim of maintenance allowance—Minor children of the couple—Whether bound by the decree.

Held, that a decree for restitution of conjugal rights in favour of a husband implies that the wife is bound to perform marital obligation to her husband. In order that the wife may enjoy the privilege of being maintained by her husband and the husband may be under obligation to maintain her, the wife should not be found to refuse to obey and to abide by the decree of Civil Court. If the wife flouts the decree for restitution of conjugal rights passed against her, and contumaciously disobeys the order of civil Court to carry out her marital obligations towards the husband by avoiding or evading to abide by the mandate of civil Court, the husband is not bound to maintain her. One-sided claim for privileges cannot be countenanced to the exclusion of discharge of corresponding obligations. One spouse cannot be compelled to carry out his or her part of the marital obligations when the other spouse is not prepared to do so. Hence when the wife fails to discharge her marital obligations in spite of the decree of the civil Court, the husband is not under obligation to maintain her and decree for restitution of conjugal rights in favour of the husband against the wife operates as a bar against the wife to claim maintenance allowance. Such a decree, however, cannot operate as a bar against the fixation of maintenance allowance for the children of the couple. When these children live with their mother, they have every justification to claim maintenance from their father in case of his neglect or refusal to maintain them.

(Paras 4 and 7)

Petition under Section 435/439 of Criminal Procedure Code for revision of the order of the Court of Shri S. S. Dewan, 1st Additional Sessions Judge, Ludhiana, affirming that of Shri A. B. Singh Wasu, Judicial Magistrate, 1st Class, Ludhiana, dated 29th May, 1969, directing the respondent (Amar Nath) to pay to the petitioner Rs. 40 P.M. as maintenance for her and her minor

Amar Nath v. Lakshmi Devi, etc. (Gopal Singh, J.)

children. This amount includes Rs. 20 for the petitioner and Rs. 5 each for the children. This amount shall be payable from 29th May, 1969.

S. K. PIPAT, ADVOCATE, for the petitioner.

H. S. SANGHA, ADVOCATE, for the respondents.

JUDGMENT

GOPAL SINGH, J.—(1) This is revision petition by Amar Nath against his wife Smti. Lakshmi Devi and their four minor children from the order of 1st Additional Sessions Judge, Ludhiana dated May 29, 1970 affirming the order of Shri A. B. Singh Wasu, Judicial Magistrate 1st Class, Ludhiana granting maintenance allowance of Rs. 40 per mensem to the wife and the children.

(2) The case of the wife was that she was being neglected and refused to be maintained by the husband, that he threatened to kill her and that he was running a grinding machine and earning Rs. 1,500 per mensem. The husband contended that he was ready and willing to maintain the wife and that in any case he had obtained a decree from a civil court against the wife under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights and that no application for fixation of maintenance could in the face of that decree lie. He added that he was earning Rs. 60 per mensem only by working at grinding mill of Mela Ram. The trial Court and so also the Additional Sessions Judge negatived his both contentions. Hence the present revision petition.

(3) Shri S. K. Pipat appearing on behalf of the petitioner has contended that there having been passed against the wife decree by civil Court under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights, no maintenance allowance could be granted to the wife.

(4) In order to ascertain whether the decree for restitution of conjugal rights passed in favour of husband against the wife is a bar against the order of maintenance passed by the two Courts below, the dates, on which both the proceedings pertaining to the suit and the application were initiated and concluded are relevant. Suit was filed by the husband against his wife under Section 9 of the Hindu Marriage Act, 1955 on January 10, 1966, for restitution of conjugal rights.

While that suit was pending, the wife made application on March 22, 1966 under Section 488(1), Criminal Procedure Code. The suit for restitution of conjugal rights was decreed by the Court on January 7, 1967. It was decreed *ex parte*. The wife made an application to set aside the *ex parte* decree. The application was dismissed rendering the decree passed final and binding upon the wife. The order fixing maintenance allowance for the wife and the children was passed by the trial Magistrate on May 29, 1969. The decree for restitution of conjugal rights in favour of the husband implies that the wife is bound to perform marital obligations to her husband. In spite of the decree of civil Court having been passed as long ago as January 7, 1967, the wife has not discharged that obligation. In order that the wife may enjoy the privilege of being maintained by her husband and the husband may be under obligation to maintain her, the wife should not be found to refuse to obey and to abide by the decree of civil Court. As the wife has flouted the decree for restitution of conjugal rights passed against her and has been contumaciously disobeying the order of civil Court to carry out her marital obligations towards the husband and has failed to act as wife by avoiding or evading to abide by the mandate of civil Court, the husband is not bound to maintain her. A decree against wife in a suit by husband for restitution of conjugal rights given by civil Court implies that the wife had no justification to refuse to live with her husband. In spite of that decree, the trial Magistrate granted maintenance allowance to the wife by taking a view about that refusal just to the contrary. As the chronological order, in which the proceedings of the suit for restitution of conjugal rights and of the application for fixation of maintenance were started and concluded, shows that it is after the suit had been filed by the husband against the wife on January 10, 1966 that she moved the Court by application made on March 22, 1966 for fixation of maintenance allowance. She chose not to appear in the suit for restitution of conjugal rights. She allowed the decree to be passed *ex parte*. Her attempt to have the *ex parte* decree passed against her set-aside proved abortive. Not only the proceedings for fixation of maintenance allowance were commenced after the suit had been instituted but also the decree for restitution of conjugal rights had become final and was binding on her prior to the order of maintenance was made. In the face of that decree, the wife having failed to perform her duties as wife cannot come round and say that she must receive her maintenance. Privileges of married life with corresponding obligations are mutual and complimentary. One sided claim

Amar Nath v. Lakshmi Devi, etc. (Gopal Singh, J.)

for privileges cannot be countenanced to the exclusion of discharge of correspondent obligations. One spouse cannot be compelled to carry out his or her part of the marital obligations when the other spouse is not prepared to do so. As the wife has failed to discharge her marital obligations in spite of the decree of the civil Court, the husband is not under obligation to maintain her.

(5) For the above reasons, I set aside the orders of the Courts below in so far as they pertain to the fixation of maintenance allowance of Rs. 20 per mensem for the wife and to that extent, I allow the revision petition filed on behalf of the husband.

(6) The maintenance was claimed by the wife on behalf of the following four children with their respective ages given on the date of the application made on March 22, 1966 under Section 488(1), Criminal Procedure Code :—

(1) Parshodam Dass	..	7 years
(2) Santosh Kumari	..	5 years
(3) Kewal Kumar	..	3 years
(4) Kishori Lal	..	2½ months.

(7) They are all minor children of very young ages. The decree for restitution of conjugal rights in favour of the husband against the wife can operate as a bar against the wife for fixation of maintenance allowance but it cannot operate as a bar against the fixation of maintenance allowance for the children. As these children are living with their mother, there is every justification for maintenance allowance being granted to them. The two Courts below have already fixed that allowance at Rs. 20 per mensem for these four children. In these days of rising spiral of prices, the amount fixed for children appears to be inadequate. The mother of the children, who made the application and prosecuted it and contested the revision petition disposed of by the Additional Sessions Judge acted as guardian and has chosen not to file any revision against the fixation of the amount of maintenance for the children. I affirm the maintenance allowance of Rs. 20 fixed by the Courts below for the children. I disallow the revision petition in so far as the fixation of maintenance allowance for the children is concerned.

B.S.G.