

Equivalent citations: 1976 CriLJ 1664

Bench: B Katju

Manmohan Singh vs Smt. Mahindra Kaur on 25/3/1976

ORDER

B.N. Katju, J.

1. This is an application under Section 482, Cr. P.C., 1973.
2. The opposite party filed an application under Section 125, Cr. P.C. 1973 against the applicant dated 6-5-1974 in the court of C. J. M., Dehradun. The applicant filed his written statement on 4-6-1974. Thereafter the statements of the opposite party and the applicant were recorded by the C. J. M., Dehradun on 23-11-1974 and 6-2-1975 respectively. The C. J. M., Dehradun by his order dated 3-8-1975 directed the applicant to pay Rs. 300 per month to the opposite party as maintenance allowance with effect from 7-5-1974. The applicant filed Criminal Revision No. 33 of 1974 against the aforesaid order which was allowed in part by the Sessions Judge, Dehradun by his order dated 2-9-1975 and the applicant was directed to pay Rs. 150 per month as maintenance allowance to the opposite party with effect from 7-5-1974.
3. Under Section 125(1)(a), Cr., P. C. 1973 maintenance allowance cannot be granted to every wife who is neglected by her husband or whose husband refuses to maintain her but can only be granted to a wife who is unable to maintain herself. It may be pointed out that this is a-departure from Section 488 of the Code of Criminal Procedure, 1898 wherein every wife, whether she was able or was not able to maintain herself, was entitled to maintenance if she was neglected or not maintained by her husband. As it was not alleged by the opposite party in her application under Section 125, Cr. P.C. 1973 and it was also not stated by her in her statement recorded by the C. J. M., Dehradun that she was unable to maintain herself and no finding has been recorded by the C. J. M., Dehradun or the Sessions Judge, Dehradun that the opposite party was unable to maintain herself, the order of the C. J. M., Dehradun dated 3-8-1975 and the order of the Sessions Judge, Dehradun dated 2-9-1975 are clearly illegal.
4. This application is accordingly allowed and the order of the C. J. M., Dehradun dated 3-8-1975 and the order of the Sessions Judge, Dehradun dated 2-9-1975 are set aside.