

A

MANOJ YADAV

v.

PUSHPA @ KIRAN YADAV
(SLP(CrI.) No. 6568 of 2009)

B

NOVEMBER 22, 2010¹

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

Code of Criminal Procedure, 1973:

C

s.125 – Maintenance to wife – Order of High Court awarding maintenance of Rs.4,000/- per month – Challenged by the husband contending that by a State amendment in State of Madhya Pradesh to s.125, the maximum amount as maintenance is Rs.3000/- HELD: Respondent granted time to challenge constitutional validity of the State amendment – States of Maharashtra, Tripura and West Bengal are stated to have, by State laws, fixed a maximum limit of Rs.1500/- as maintenance u/s 125 – In prima facie opinion of the Court, such laws are unconstitutional being violative of Articles 14 and 21 of the Constitution – Notice to issue to the State Governments concerned as also to the Central Government – Constitution of India, 1950 – Articles 14 and 21.

D

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CRIMINAL APPELLATE JURISDICTION : SLP (CRL.)
Appeal No. 6568 of 2009.

F

From the Judgment & Order dated 23.01.2009 of the High Court of Madhya Pradesh at Jabalpur, bench at Gwalior in Criminal Revision No. 12 of 2008.

G

Jai Prakash Pandey for the Petitioner.

Nikilesh Ramachandran, Alok Pandey, Shantanu Singh for
he Respondent.

1. Order subsequently modified as reported in [2010] 13 (Addl.) SCR 897.

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The following order of the Court was delivered A

ORDER

The petitioner is the husband who is challenging an order under Section 125 Cr. P.C awarding maintenance of Rs. 4000/- per month to the wife. Learned counsel for the petitioner submitted that by a State amendment in Madhya Pradesh to Section 125 Cr.P.C. the maximum amount which can be awarded in Madhya Pradesh as Maintenance is Rs. 3,000/-. B

Learned counsel for the respondent is granted two weeks time for filing an application challenging the Constitutional validity of Madhya Pradesh Act 50 of 2004. by which the maximum limit of Rs. 3000/- per month has been fixed for granting maintenance under Section 125 CrPC. Issue notice to the State of Madhya Pradesh returnable in four weeks. C

We have been informed that the States of west Bengal, Tripura and Maharashtra have also fixed a maximum limit of Rs. 1500/- as maintenance under Section 125 CrPC, by State Laws. D

In our prima facie opinion such laws are unconstitutional being violative of Articles 14 and 21 of the Constitution. E

Issue notice also to these three State Governments. The Central Government who also may file reply within four weeks. F

Issue notice to the Central Government and Union of India. These Governments and above mentioned State Governments will be impleaded as respondents in this Case.

We request Ms. Kamini Jaiswal to assist this Court as amicus curiae in this case. G

We are issuing notices to these governments in this case because in our prima facie opinion the above mentioned amendments are unconstitutional being violative of Article 14 H

A and 21 of the Constitution because the husband may be earning a huge money and to award a petty amount to the wife is wholly arbitrary and unconscionable in these days of inflation.

B No doubt the object of Section 125 Cr.P.C. is to prevent vagrancy, but vagrancy is relative word. For many women awarding them Rupees 1500/- per month, or even Rs. 3,000/- per month may amount to keeping them in a condition of vagrancy.

C List this case again on 11th January 2011. Copies of this Petition will be supplied by counsel for the parties to the State Governments mentioned in this order and also to the Central Government. Office will supply copy of this petition and this order free of charges to Ms. Kamini Jaiswal forthwith.

R.P.

Special Leave petition adjourned.

MANOJ YADAV

v.

PUSHPA @ KIRAN YADAV

(Petition(s) for Special Leave to Appeal (Crl) No(s).6568 of
2009)

NOVEMBER 23, 2010

[MARKANDEY KATJU AND GYAN SUDHA MISRA, JJ.]

Code of Criminal Procedure, 1973:

s.125 – Maintenance to wife – Order dated 23.11.2010 passed by Supreme Court issuing notice to certain States which by amendments limited maximum amount of maintenance to Rs.1500/- per month – HELD: The State amendments were made for the benefit of the women because at that time the 2001 amendment deleting the maximum limit had not been enacted by Parliament and there was a maximum limit of Rs.500/- per month in s.125 (1) for grant as maintenance – Order dated 22.11.2010 modified – The States which had made the amendments prior to the 2001 Amendment enhancing the maintenance from Rs.500/- per month to a higher figure are States of Madhya Pradesh, Maharashtra, Rajasthan, Tripura and Uttar Pradesh - Notice to issue to these States – The Court is of the prima facie view that in view of the 2001 Amendment to the Code by Parliament, the maximum maintenance prescribed by the State Legislatures concerned is no longer valid in view of Article 254(1) of the Constitution, apart from being unconstitutional as being violative of Articles 14 and 21 of the Constitution – Order dated 22.11.2010 accordingly modified – Constitution of India, 1950 – Articles 14, 21 and 254(1).

**CRIMINAL APPELLATE JURISDICTION : SLP (CRL.)
Appeal No. 6568 of 2009.**

A From the Judgment & Order dated 23.01.2009 of the High Court of Madhya Pradesh at Jabalpur, bench at Gwalior in Criminal Revision No. 12 of 2008.

B Kamini Jaiswal (AC), Jai Prakash Pandey, Nikilesh Ramachandran for the appearing parties.

The following order of the Court was delivered

ORDER

C Yesterday (22-11-2010) we had passed an order in this case, but subsequently Ms. Kamini Jaiswal, whom we had requested to be Amicus Curiae in this case, informed us that the above order requires some modification. We agree with this submission, and accordingly we are modifying the order passed yesterday.

D It appears that in the original code Criminal Procedure of 1973 the maximum maintenance which could be granted by the Magistrate under Section 125 (1) Cr.PC was Rs. 500/- per month. Subsequently by the Code Criminal Procedure E (Amendment) Act of 2001 enacted by Parliament the words "not exceeding five hundred rupees in the whole" in Section 125(1) were deleted w.e.f. 24.9.2001.

In the Statement of Objects to the Act of 2001 it was stated:

F "The ceiling of rupees five hundred per month for maintenance allowance was prescribed in the year 1955 in Section 488 of the Code of Criminal Procedure, 1898. A ceiling of rupees five hundred was prescribed in Section G 125 of the Code Criminal procedure, 1973 on the lines of Section 488 of the Code Criminal Procedure, 1898 which has since been repealed. In view of the cost of living index continually rising, retention of a maximum ceiling is not justified. If a ceiling is prescribed and retained, it would require periodic revision taking into account the inflation H and rise in the cost of living as well as amendment of

provisions of the Act from time to time. This would necessarily be time consuming. Accordingly, it is also proposed to amend Section 125 and make consequential changes in Section 127 of the Code Criminal Procedure to remove the ceiling of maintenance allowance." A

Prior to the 2001 amendment of the Code Criminal Procedure by Parliament many State Legislature had passed State Amendments of Section 125(1) Code Criminal Procedure enhancing the maximum maintenance which could be granted from Rs. 500/- per month to a higher figure. Obviously it was felt by those State Legislatures that Rs. 500/- per month is not sufficient. Hence these State Amendments were made for the benefit of the women because at that time the 2001 Amendment had not been enacted by Parliament, and there was a maximum limit of Rs. 500/- per month in Section 125 (1) for grant as maintenance. B
C
D

The States which had made these State Amendments prior to the 2001 Amendment enhancing the maintenance from Rs. 500/- per month to a higher figure are the States of Madhya Pradesh, Maharashtra, Rajasthan, Tripura and Uttar Pradesh. E

We are prima facie of the opinion that in view of the 2001 Amendment to the Code Criminal Procedure by Parliament, the maximum maintenance prescribed by the above mentioned State Legislatures are no longer valid in view of Article 254(1) of the Constitution, apart from being unconstitutional now as being violative of Articles 14 and 21 of the Constitution as we have indicated in our order passed yesterday. However, this is only our prima facie opinion and subject to the final order passed in this case. F
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Issue Notice to the State Governments of Madhya Pradesh, Maharashtra, Rajasthan, Tripura and Uttar Pradesh, who may file counter affidavit within four weeks from today. The H

A case has been listed for final disposal on 11.01.2011 and we reiterate that date.

However, since the counsels for the above mentioned State Governments are not present in Court today, list this case again tomorrow before us showing the names of counsels for the Stae Governments of Madhya Pradesh, Maharashtra, Rajasthan, Tripura and Uttar Pradesh.

R.P.

Matter adjourned.