

Supreme Court of India

B.N. Agrawal, G.S. Singhvi, JJ.

Minakshi Gaur v. Chitranjan Gaur

CRIMINAL APPEAL NO.1080 OF 2008 (Arising out of S.L.P. (Crl.) No.2124 of 2008)

14 July, 2008

CrPC S. 125 - Order dismissing the petition under Section 125 on the sole ground that the wife was a working lady and had income from properties, as such, she may be able to maintain herself out of the said income - Set aside - Husband, a graduate in Engineering and his income is Rupees twenty thousand - Wife's returned income shows that she was earning even less than Rupees nine thousand per month - It is not possible for the wife to maintain herself in the town of Agra with the income of less than Rupees nine thousand per month - The husband, is liable to pay some amount of maintenance to the wife so that she may be able to maintain herself - Rupees five thousand per month to be paid to the wife by way of maintenance from the date of filing of the petition under Section 125 Cr.P.C.

ORDER

Leave granted.

2. Heard learned counsel appearing on behalf of the parties. The Magistrate dismissed the petition under Section 125 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') on the sole ground that the wife was a working lady and had income from properties, as such, she may be able to maintain herself out of the said income. The said order has been confirmed by the High Court. Hence, this appeal by special leave.

3. According to the case of the appellant, her husband, who is Respondent No.1 herein, is a graduate in Engineering and his income is Rupees twenty thousand. In the counter affidavit filed before this Court, the fact that the income of the husband is Rupees twenty thousand per month has not been denied. However, it has been asserted that wife's returned income is Rs.98,820/- per annum, which shows that she was earning even less than Rupees nine thousand per month. Both the wife and husband are residing at Agra. In our view, it is not possible for the wife to maintain herself in the town of Agra with the income of less than Rupees nine thousand per month. The husband, who is earning at least Rupees Twenty thousand per month, as stated by the appellant in this appeal and not controverted, is liable to pay some amount of maintenance to the wife so that she may be able to maintain herself. In the facts and circumstances of the case, we are of the view that it would be just and expedient to direct the husband to pay Rupees five thousand per month to the wife by way of maintenance from the date of filing of the petition under Section 125 Cr.P.C.

4. Accordingly, the appeal is allowed, the impugned orders are set aside, petition under

Section 125 Cr.P.C. is allowed and Respondent No.1 is directed to pay maintenance at the rate of Rupees five thousand per month from 1st November, 1998 till 31st July, 2008 in the following manner:

5. By 31st August, 2008, Rupees fifty thousand; By 30th September, 2008, Rupees fifty thousand; By 31st October, 2008, Rupees fifty thousand; By 31st November, 2008, Rupees One lakh fifty thousand; By 31st December, 2008, Rupees One lakh fifty thousand; By 31st January, 2009, the balance amount.

6. All the instalments shall be paid by way of Account Payee Demand Draft drawn upon a Bank at Agra, in favour of the appellant-Minakshi Gaur. The bank draft shall be made over to the wife by the husband personally or through his representative within the aforesaid time. The current amount of maintenance beginning from the month of August, 2008, at the same rate shall be paid to the wife by 15th day of the following month, i.e., maintenance for the month of August, 2008, shall be paid by 15th September and in the like manner for subsequent months.