



IN THE HIGH COURT OF SIKKIM AT GANGTOK

DATED : 13.10.2010

CORAM

**HON'BLE MR. JUSTICE P. D. DINAKARAN,
CHIEF JUSTICE
AND
HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE.**

Matrimonial Appeal No.01 of 2010

Shri Anil Dong
Son of Shri Santa Kumar Dong,
Resident of Reshi Bazar,
Reshi, West Sikkim,
P.O. Reshi and P.S. Naya Bazar
..... Appellant

- versus -

1. Smt. Leela Shilal,
Daughter of Late Khersang Shilal,
Resident of Lower Kamling (Sikip),
P.O.Reshi and P.S. Naya Bazar,
West Sikkim.
2. Master Pema Kingtso Dong,
Represented through his Mother
Smt. Leela Shilal (Respondent No.1)
Resident of Lower Kamling (Sikip),
P.O.Reshi and P.S. Naya Bazar,
West Sikkim. Respondents

For the appellant : Mr. Karma Tshering Tamang and
Mr. Bhusan Nepal, Advocates.

For the respondents : None.

J U D G M E N T

Dinakaran. CJ.

The appeal is directed against the order dated
20.09.2010, passed by the Family Court (South and West



Sikkim) at Namchi, in Family Court (Criminal) Case No.8 of 2009, awarding a maintenance allowance of an amount of Rs.5000/- per month for the maintenance of the respondent nos. 1 and 2 herein and petitioner nos. 1 and 2 before the Family Court till further orders, which shall be paid by the appellant (husband) to the respondent nos. 1 and 2 herein, the wife and minor son, by depositing the same in first petitioner's account number 531802010002990 in Union Bank of India, Jorhang, with effect from the date of filing of the application, i.e. 12.02.2009.

2. The Family Court has, in its order dated 20.09.2010 examined PWs. 1, 2 and 3. PW1 is the first petitioner herself, PW 2 who is her neighbour, and PW3 is the brother-in-law of the appellant herein. Apprehending the evidence of PW1, PW2 and PW3, the learned Family Court held that appellant (husband) and the first petitioner were living as husband and wife even though the appellant pleaded the first petitioner is not the legally wedded wife of the appellant and that the respondent no.2 is the 4 year old son born to them.

3. It is also on record that the first respondent (wife) filed a petition for restitution of conjugal rights and to restrain the appellant from marrying another lady, namely, Jamuna Chettri.

4. The Family Court exercising its power under Section 125 of the Cr.P.C., held that the appellant husband is



a Contractor and he has recently been awarded a contract work for a sum of Rs.10,00,000/- (Rupees ten lakhs) in the J.P.C.L., Project, further it was held that he is also a part time employee in NREGA., and accordingly awarded Rs.5000/- per month as monthly maintenance to respondent no.1 (wife) and respondent no.2 (son) from the date of application. As rightly observed by the Family Court, the dominant purpose behind the benevolent provisions contained in Section 125 Cr.P.C. is that, the wife, child and parent should not be left in a state of distress, destruction and starvation and should not be neglected. The appellant (husband) has got an obligation to maintain the respondent no.1 (wife) and respondent no.2 (son) without neglecting them. Section 125 Cr.P.C. is a welfare measure to ensure social justice.

5. We, therefore, do not find any reason to interfere with the orders passed by the Family Court.

6. However, Mr. Karma Tshering Tamang, learned Counsel for the appellant, contends that the appellant is not earning deficit monthly income, and, therefore, the award of Rs.5000/- to respondent no.1 (wife) and respondent no.2 (son) is excessive, and hence the appellant seeks the reduction of the same. If that be so, suffice it to permit them again to move the Family Court with relevant documentary evidence, seeking necessary modification of the order dated 20.09.2010, in Family Court (Criminal) Case No. 8 of 2009, and in which event the Family Court shall consider the case of the appellant on merits and pass appropriate orders in the



matter, without being influenced by any of the observations made above.

7. The appeal is disposed of accordingly. No cost.


Judge
13.10.2010


Chief Justice
13.10.2010

Index : Yes/No

Internet : Yes/No

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