
(2006) 09 JH CK 0053
In the Jharkhand High Court

Adalat Sahish

APPELLANT

Vs

Andhi Devi and Another

RESPONDENT

Date of Decision : 18-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401

Citation : (2007) 1 DMC 24 : (2007) 1 JCR 487

Hon'ble Judges : M. Karpaga Vinayagam, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, C.J.—Maintenance application has been filed by the opposite party-wife seeking maintenance for herself After inquiry, the Trial Court ordered for payment of maintenance of Rs. 800 per month from the date of order, which is under challenge.

2. I have heard Mr. S.P. Sinha, learned Counsel for the petitioner and Mr. T.N. Verm, learned Counsel appearing for the State.

3. It is contended by the Counsel for the petitioner that notice has been sent to her and despite service of notice, she has not cared to appear before the Court to defend the case. The main defence taken by the husband before the Trial Court is that the marriage between the wife and husband has not been proved and as a matter of fact, the petitioner's wife already died and, as such, the evidence adduced on behalf of the alleged wife, which is materially contradictory, cannot be relied upon to conclude that the opposite party-alleged wife is entitled to maintenance.

4. Counsel for the State opposed the admission of this application on the ground that the evidences adduced have been dealt with by the Trial Court in a proper perspective and the Trial Court correctly believed the evidence adduced by the wife and also gave finding regarding marriage performance to the effect that she is the wife and is entitled to maintenance. When the Court asked the petitioner

whether any payment has been made in Court subsequent to the impugned order dated 13.9.2004, Counsel for the petitioner fairly stated that since he disputed the marriage, he has not made any payment. It is noticed that notice was issued on 9.9.2005 and it is strenuously stated by the Counsel that notice has been served on the alleged wife.

5. On going through the impugned order, it is clear that the Trial Court discussed the evidence in detail and believed the version of the wife on the basis of evidence produced by then, namely P.Ws. 1 to 4. On the basis of testimony tendered by P.Ws. 1 to 4, the Trial Court concluded that the marriage is proved and the wife is entitled to maintenance.

6. Counsel for the petitioner submitted that even though there is evidence adduced by P.Ws. 1 to 4 since they gave different contradictory evidence regarding performance of marriage, a finding that the marriage has been proved is not legal.

7. While dealing with this matter, I am conscious that the scope of revision under Sections 397 and 401, Cr.P.C. is limited. This Court may not interfere with the factual finding rendered on the basis of the evidence of P.Ws. 1 to 4 and it is noted that the wife has examined P.Ws. 1 to 4 whereas the husband has examined two witnesses namely O.P. Ws. 1 and 2. It is strenuously contended by the Counsel for the petitioner that despite the service of notice issued by this Court, the alleged wife deliberately wanted to avoid appearing before this Court. This contention, in my view, is not without basis. The Trial Court has given reasoning for believing the evidence of O.P. Ws. 1 and 2 and also has given reasoning for believing the evidence of P.Ws. 1 to 4. This factual finding normally cannot be disturbed by this Court. When the Counsel for the petitioner was asked whether he could deposit some amount in Court as an interim measure pending admission, Counsel for the petitioner submitted that the petitioner may not be able to pay or deposit any amount in Court, since his specific stand is that the opposite party-wife is not his wife. In the circumstances, there is no other alternative to this Court but to take decision with reference to the merit of the case since the factual finding has been arrived at on the basis of evidence adduced. I do not find any merit in this revision which is accordingly dismissed.