

(2009) 11 JH CK 0100
In the Jharkhand High Court

Ajit Yadav

APPELLANT

Vs

The State of Jharkhand and Madhuri @ Madho Devi

RESPONDENT

Date of Decision : 18-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Family Courts Act, 1984 — Section 19(4)

Penal Code, 1860 (IPC) — Section 498A

Citation : (2009) 11 JH CK 0100

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Judgement

D.K. Sinha, J.—This petition has been preferred on behalf of the petitioner u/s 19(4) of the Family Court Act against the order impugned dated 4.5.2009 passed by the Principal Judge, Family Court, Deoghar in Misc Case No. 132 of 2008 by which ad-interim maintenance to the tune of Rs. 1000/- per month from the date of the order was allowed to the wife-opposite party No. 2 and her daughter. In addition to that a sum of Rs. 2000/- lump sum was also awarded being the litigation cost.

2. A proceeding was initiated u/s 125 of the Code of Criminal Procedure at the instance of the complainant-opposite party No. 2 against the petitioner-husband. Marriage between the parties was not denied and a female child was born to them out of their wed-lock. It was alleged that after 17 years of their marriage, the O.P. No. 2 was driven out with her daughter from her matrimonial home by raising demand of a cow and cash of Rs. 20,000/- and also ill treating her. Finding no way out, the complainant-opposite party No. 2 took shelter at her mother's house. Disclosing the source of income of her husband, the complainant- opposite party No. 2 stated that he had been earning of Rs. fifteen thousand per month by selling milk apart from agricultural income. On receipt of the notice, the petitioner-husband appeared and filed show cause stating that he was a poor daily wage earner having earning of Rs. 50/- per day by manufacturing Bidi which cannot be held to be his substantial earning. He had

further asserted that neither he had dairy nor having earning of Rs. 15,000/- by selling milk, nor he had land either in the village or in the town in his name so as to part with the awarded amount. Nevertheless, he was ready to keep and maintain his wife.

3. Though it is evident that no separate petition for ad-interim, maintenance was filed but on oral submission of the counsel for the wife -O.P. No. 2, the learned Principal Judge, Family Court, Deoghar having been satisfied with the pleadings u/s 125 Code of Criminal Procedure and the arguments advanced on behalf of the parties allowed the Interim maintenance Rs. 600/- per month to the wife-opposite party No. 2 and Rs. 400/-per month to her daughter in the manner indicated herein before, besides Rs. 2000/- being the litigation cost in lump sum.

4. The learned Counsel appearing on behalf of the petitioner insisted that notice may be directed to be issued to the O.P. No. 2 for her appearance so that the process of reconciliation may be effected as the husband-petitioner was ready to keep and maintain his wife with all dignity and honour according to his capacity. But I find from the order impugned that conciliation process was undertaken by the Principal Judge, Family Court during the proceeding wherein the petitioner had orally admitted the second marriage and the wife O.P. No. 2 under such circumstances refused to live with him.

5. On the point of maintenance allowance the learned Counsel assailed that though the petitioner asserted that his daily income was Rs. 50/- per day by manufacturing Bidi but the learned Principal Judge, without considering fixed Rs. 1000/- to be paid to the wife-opposite party Nq.2 and their daughter disproportionate to the income of the petitioner. From perusal of the order impugned I find that the order has been recorded after meticulously examining the oral submissions and the pleadings. There was averment that separate petition u/s 498A of the IPC was filed against the husband-petitioner for the alleged ill-treatment. As the conciliation between the parties failed in spite of the steps taken by the learned Principal Judge, Family Court, Deoghar I do not think that further reconciliation may bring fruitful result in the backdrop of alleged bigamy against the petitioner husband. As regard quantum of maintenance is concerned, I find that even if he was a daily wage earner, minimum wages as prescribed for a Majdoor in the State of Jharkhand is Rs. 93/- and therefore, it cannot be presumed that his earning is only Rs. 50/- per day. Assuming such earning at the rate of Rs. 93/- per day I do not think that Rs. 1000/- by way of ad-interim maintenance allowance would be beyond his capacity to pay his wife and daughter during pendency of the proceeding u/s 125 of Cr.P.C.

6. In view of the above observation, I do not find merit in this Criminal Revision and accordingly it is dismissed withholding the order of the Principal Judge, Family Court, Deoghar. However, in the facts and circumstances the litigation cost that has been awarded against the petitioner to the tune of Rs. 2000/- is directed to be paid to the complainant-opposite party No. 2 in two equal installments within three months of this order, as requested by the counsel.