
(2009) 07 JH CK 0080
In the Jharkhand High Court

Arun Kumar

APPELLANT

Vs

The State of Jharkhand, Rupa Kumari and Anustha

RESPONDENT

Date of Decision : 21-07-2009

Acts Referred:

Hindu Marriage Act, 1955 — Section 13
Penal Code, 1860 (IPC) — Section 125, 497, 498

Citation : (2009) 07 JH CK 0080

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Judgement

Pradeep Kumar, J.—This revision is directed against the order dated 10.7.2008 passed by Principal Judge, Family Court, Jamshedpur in I.A. No. 09/06, by which order the learned Principal Judge allowing an application for interim maintenance filed by the petitioner's wife opposite party No. 2 and his minor daughter opposite party No. 3. and directed the petitioner to pay interim maintenance of Rs. 4000/- each to opposite party Nos. 2 & 3 (total Rs. 8000) per month to the opposite party No. 2 starting from 25.9.2006 every month as interim maintenance till disposal of the Misc. Case No. 57 of 2006.

2. It is submitted by the learned Counsel for the petitioner that earlier the opposite party Nos. 2 & 3 had filed an Interlocutory Petition No. 09/06 whereby Rs. 1,000/- was allowed to the opposite party No. 3. But the claim for interim maintenance of opposite party No. 2 was refused on the ground that she was living in adultery. Thereafter the opposite party Nos. 2 & 3 filed Cr. Rev. No. 986 of 2007 before this Court on 21.7.2007 by which order the Hon'ble High Court set aside the order passed in I. A. No. 9/06 and directed the court below to pass afresh order and accordingly after hearing both the parties the learned Principal Magistrate has passed the impugned order, which is bad in law and fit to be set aside.

3. It is submitted by the learned Counsel for the petitioner that opposite party No. 2 had filed a Matrimonial Suit No. 71 of 2006 u/s 13(1)(a) of Hindu Marriage

Act for a decree of divorce on 18.4.2006. Since the petitioner came to learn that his wife is living in adultery with one Ritesh Kumar. The petitioner also filed an application before S.P. Bokaro against Ritesh Kumar on the basis of which a case was registered against him. The petitioner has filed a case under Sections 497/498 of the Indian Penal Code, which was registered as C.P. Case No. 62/2007 by which judgment dated 13.1.2009 the learned Judicial Magistrate found the accused, Ritesh Kumar guilty u/s 497 of the Indian Penal Code and sentenced him to simple imprisonment for a period of 2 years. Now it has been proved by the aforesaid judgment passed in C.P. Case that the wife is living in adultery and as per Section 125(4) no wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this Section if she is living in adultery, or if, without any sufficient reason, she refused to live with her husband, or if they are living separately by mutual consent, and as such the impugned order is bad in law and fit to be set aside.

4. On the other hand, learned Counsel for the opposite party Nos. 2 & 3 has submitted that the learned trial court by its impugned order relying on the finding of the Hon"ble High Court in Cr. Rev. No. 986/07 that there is no legal evidence that Rupa Kumari is living in adultery and also as per the direction of the Hon"ble Court that since the daughter of opposite party No. 2 is suffering from systic imbrose and that her treatment is available only at C.M.C.H., Vellore incurring heavy cost and considering that the Hon"ble Court (sic) only Rs. 1000. to opposite party No. 3, Anustha is insufficient. Hence considering the aforesaid finding the learned trial court allowed an interim maintenance of Rs. 8,000 each to "opposite party No. 2 and opposite party No. 3. He has further submitted that the trial court has also found that the petitioner, who is working as Manager in Bokaro Steel Plant and getting handsome salary of Rs. 25,000/- per month along with free quarter and car with driver, is only paying a sum of Rs. 8,000/- to the wife and child. He has further submitted that as far as the finding given by Judicial Magistrate against accused, Ritesh Kumar is concerned, there is no finding that Ritesh Kumar is living in adultery with opposite party No. 2. The finding is based only on guess and surmises. Moreover, the opposite party No. 2, Rupa Kumari was not a party to aforesaid complaint case No. 62/07, nor she was examined as a court witness in that case. In that view of the matter, the finding arrived at against accused Ritesh Kumar cannot be used for blocking the interim maintenance to the opposite party Nos. 2 & 3.

5. After hearing both the parties and going through the record, I find that earlier while passing judgment against refusal to grant interim maintenance to the wife-opposite party No. 2 on the ground that she is living in adultery in Cr. Rev. No. 986/07 dated 20th March, 2008, this Hon"ble Court gave a clear finding that there is no legal evidence to show that the wife is living in adultery and hence the order refusing to grant interim maintenance was set aside and the leaned Family Court Judge, Jamshedpur, was directed to pass afresh order. Accordingly, the impugned order has been passed. Now again the petitioner has challenged

the said order mainly on the basis of the judgment of conviction passed by Judicial Magistrate, 1st Class, Bokaro, in Complaint Case No. 62 of 2007, by which judgment the said Ritesh Kumar has been found guilty u/s 497 of the Indian Penal Code.

6. From perusal of the aforesaid judgment of conviction dated 13.1.2009 passed by Judicial Magistrate, 1st Class, Bokaro, which has been" annexed by the petitioner as Annexure-10 in supplementary affidavit, it appears that opposite party No. 2, Rupa Kumari was not a party to the said complaint petition nor she was examined as a witness in that case. The learned Judicial Magistrate in para 20 of its judgment, has stated that the complainant C.W.1, Aran Kumar "that my wife went to his father-in-law's house with my mother-in-law along with my daughter". For the offence of adultery, wife of another person and she should be married and have sexual relationship with the consent of that man. Sexual intercourse is the gist of the direct evidence of adultery, is extremely difficult to find out. So, the Court himself found that there is no direct evidence that the opposite party No. 2 was having any sexual intercourse with the said Ritesh Kumar and she is living in adultery. In the same paragraph only on the basis of some evidence that opposite party No. 2 was seen in the house of Ritesh Kumar, the court has made a case mat "in a bolted house they were either worshipping in the room or living in adultery". So the conviction of Ritesh Kumar is based on mere guess and surmises and there is no finding that Ritesh Kumar was living in an adultery with opposite party No. 2 or vice-versa that she was living in adultery.

7. In that view of the matter, the prayer of the petitioner to set aside the order because as per Section 125(4), Rupa Kumari is living in a adultery, has not been proved nor there is any legal evidence even today and as such in my opinion, the interim order of maintenance passed by the trial court does not requires any interference by this Court.

8. There is no merit in the revision application and the same is accordingly dismissed.