
(2019) 01 JH CK 0176

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petitions No.1395 Of 2011, Criminal Miscellaneous PetitionsNo. 2398 Of 2015

Ashok Kumar

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 09-01-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125, 125(2), 125(3)
Indian Penal Code, 1860 — Section 120B, 313, 315, 406, 498A

Citation : (2019) 01 JH CK 0176

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Prabhat Kr. Sinha, Awnish Shankar

Final Decision : Dismissed

Judgement

1. Cr.M.P. No.1395 of 2011 has been filed for quashing the entire proceeding of Maintenance Case no.114 of 2005 filed by the opposite party no.2

under Section 125 Cr.P.C. for grant of maintenance to her by the petitioner.

2. Cr.M.P. No.2398 of 2015 has been filed for quashing the order dated 15th October, 2015 passed by the learned Principal Judge, Family Court,

Hazaribagh in Maintenance Case No.114 of 2005, whereby distress warrant has been issued against the petitioner for realizing an amount of

Rs.1,06,000/- as arrears of interim maintenance payable to the opposite party no.2 for the period from 25th November, 2006 to 30th September, 2015.

3. Learned counsel for the petitioner has given much emphasis on his argument that the opposite party no.2 entered into a compromise with the

petitioner while consideration of B.P. No.695 of 2008 by the court of learned Sessions Judge, Hazaribagh. Learned counsel for the petitioner refers to

the order dated 8th July, 2008 passed in the said bail petition and submits that the learned Sessions Judge, Hazaribagh took note of the fact that the dispute between the petitioner and the opposite party no.2 was taken up before the Conciliation Centre, Hazaribagh, wherein the petitioner agreed to pay Rs.3.00 lacs to the opposite party no.2. The petitioner was granted provisional bail vide order dated 8th July, 2008 on payment of Rs.1.00 lacs by way of first instalment to the opposite party no.2 through demand draft. Subsequently, on 8th August, 2008 the petitioner paid Rs.90,000/- by way of second instalment. Further, vide order dated 18th September, 2008 the petitioner paid Rs.1.10 lac to the opposite party no.2 by way of bank draft and, thus, the entire amount of Rs.3.00 lacs was paid to the opposite party no.2. In the said order dated 18th September, 2008, learned Sessions Judge, Hazaribagh also made an observation that as per the compromise entered between the parties before the Conciliation Centre, Hazaribagh, the petitioner-husband was ready to pay Rs.3.00 lacs as compensation to the opposite party no.2-wife for compromising all cases and withdrawing the same. Though, the opposite party no.2 was adamant for payment of Rs.5.00 lacs to her before the Conciliation Centre, yet she agreed to the same on 8th July, 2008 in the Court and accepted Rs.1.00 lac by way of demand draft as the first instalment. It is, thus, submitted by the learned counsel for the petitioner that since the opposite party no.2 has received an amount of Rs.3.00 lacs from the petitioner for compromising the cases including the present maintenance case, there is no justification on her part to further pursue the present maintenance case before the learned Principal Judge, Family Court, Hazaribagh. It is also submitted that the opposite party no.2 did not pursue the said maintenance case from 2008 to 2012. The said conduct of the opposite party no.2 indicates that she was happy after receiving the amount of Rs.3.00 lacs from the petitioner during consideration of his bail application before the learned Sessions Judge, Hazaribagh. Otherwise also, in view of the provisions of the first proviso to Section 125(3) Cr.P.C., the Principal Judge, Family Court, Hazaribagh should not have issued the distress warrant against the petitioner for realization of the amount of interim maintenance for a period of about ten years. It is also submitted that the learned Sessions Judge has acquitted the petitioner and other co-accused in the criminal case lodged by the opposite party no.2 for the offences under Sections 498A, 313, 315, 406 and 120B of the Indian Penal Code

vide judgment dated 9th August, 2011 passed in S.T. No.365 of 2008. Learned Sessions Judge while acquitting the petitioner and other co-accused has

taken note of the fact that the petitioner and the opposite party no.2 had amicably compromised the matter as per the agreement between them that on

payment of Rs.3.00 lacs by the petitioner to the opposite party no.2, she would withdraw all the cases filed against the petitioner and his family

members. Therefore, the entire proceeding of Maintenance Case no.114 of 2005 including the order dated 15th October, 2015 is liable to be quashed.

Learned counsel for the petitioner in support of his argument, puts reliance on a judgment rendered in the case of Bhikhu Lal Giri Vs. Smt. Uma Devi

& Anr., reported in 2004(1) JCR 322 (Jhr.).

4. On the contrary, learned counsel for the opposite party no.2 submits that the contention of the petitioner that Rs.3.00 lacs was paid to the opposite

party no.2 by way of an agreement to withdraw all the cases filed against the petitioner and his family members by the opposite party no.2 is factually

wrong. In fact, the opposite party no.2 had accepted the said amount while consideration of the petitioner's prayer for bail before the learned

Sessions Judge, Hazaribagh for her medical treatment, as she got critically injured due to the assault made by the petitioner, inflicting serious injury to

her urinary bladder. It is true that the opposite party no.2 agreed to withdraw the pending criminal case filed against the petitioner and his family

members under Sections 498A, 313, 315, 406 and 120B of the Indian Penal code, however, she never agreed for withdrawing all the pending cases

between the parties. The payment of maintenance is a right of deserted wife and, therefore, the compromise between the petitioner and the opposite

party no.2 cannot be stretched to the extent that the opposite party no.2 had also foregone her claim for maintenance from the petitioner.

5. Heard learned counsel for the parties and perused the materials available on record. On perusal of the orders dated 8th July, 2008 and 18th

September, 2008 passed by the learned Sessions Judge, Hazaribagh in B.P. No.695 of 2008, there appears to be a factual error in the observation of

the learned Sessions Judge that the opposite party no.2 had agreed for withdrawal of all the pending cases. Perusal of the relevant documents would

rather suggest that the opposite party no.2 initially did not agree for accepting an amount of Rs.3.00 lacs from the petitioner at Mediation Centre,

Hazaribagh, however, on 18th September, 2008 she agreed to accept the said amount before the Court. The said acceptance by her, however, could not have been treated to be her agreement for withdrawing all the pending cases between the parties in absence of any such agreement between them.

6. Thus, in my considered opinion, the contention of the learned counsel for the petitioner that the opposite party no.2 by accepting Rs.3.00 lacs from the petitioner had agreed for withdrawing all the cases pending between the parties, including the present one is factually incorrect.

7. The next limb of the argument of the learned counsel for the petitioner is that the opposite party no.2 did not pursue the matter of maintenance from

2008 to 2012, as she herself knew that she had compromised all the pending cases between the parties. I find no substance in the said argument of the

learned counsel for the petitioner as well. Even if the opposite party no.2 did not pursue the matter for few years, the same cannot be treated to be an

acceptance on her part that she has forgone the amount of interim maintenance to be paid by the petitioner in terms with the order(s) passed by the

Principal Judge, Family court, Hazaribagh in the present maintenance case. Moreover, the impugned order dated 15th October, 2015 itself suggests

that the evidence of the opposite party no.2 was complete in the said maintenance case and the same was fixed for evidence of the petitioner and

keeping in view the said circumstance, the learned Principal Judge, Family Court, Hazaribagh declined to direct the opposite party no.2 to withdraw

the said case despite insistence of the petitioner.

8. So far as the argument of the learned counsel for the petitioner is that the impugned order dated 15th October, 2015 passed by the learned Principal

Judge, Family court, Hazaribagh is dehors the provisions of the proviso to Section 125(3) Cr.P.C. is also not worth consideration at this stage. The said

factual issue was never raised by the petitioner before the Principal Judge, Family Court, Hazaribagh and as such there is no consideration on the said

point in the impugned order dated 15th October, 2015. Otherwise also, in the case of Shantha @ Ushadevi and Anr. Vs. B.G. Shivananjappa, reported

in (2005)4 SCC 468, the Honâ??ble Supreme Court has held that Section 125 Cr.P.C. is a measure of social legislation and it has to be construed

liberally and it is unreasonable to insist on filing of successive applications when

the liability to pay the maintenance as per the order passed under

Section 125(2) is a continuing liability. Again in the case of Poongodi & Anr. Vs. Thangavel, reported in (2013)10 SCC 618, the Honâ??ble Supreme

Court after relying on the judgment of Shantha @ Ushadevi (Supra.) has been pleased to direct the respondent of that case (i.e. the husband) to pay

maintenance from the date of filing of the maintenance petition i.e. 4.2.1993 within a period of six months and thereafter continue to pay the current

maintenance and in case of failure the trial court was directed to issue a warrant of arrest against the respondent and ensure the execution by taking

him in custody as provided under Section 125(3) Cr.P.C.

9. In view of the aforesaid discussions, I see no reason to entertain both the criminal miscellaneous petitions filed by the petitioner and the same, being devoid of merit, are, accordingly, dismissed.