

(1999) 12 PAT CK 0067
In the Patna High Court
Case No : Criminal Revision No. 738 of 1998

Bijay Kapri

APPELLANT

Vs

Smt. Kanishta Devi and The State of Bihar

RESPONDENT

Date of Decision : 15-12-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Penal Code, 1860 (IPC) — Section 120B, 323, 379, 406

Citation : (2000) 2 PLJR 241

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

Advocate : Anwita Jha, Sunil Kr. Mandal and Shivendra Kr. Sinha, for the Appellant; Jayprakash Jha, Rajiv Kumar Singh, Kamal Kishore Jha for Opp. Party No. 1 and P.P. for State, for the Respondent

Final Decision : Dismissed

Judgement

I.P. Singh, J.—This revision petition is directed against the order dated 8.9.1998 passed by Sub-Divisional Judicial Magistrate, Banka in Misc. Case No. 25/91, 2468/98 by which the Petitioner was directed to pay maintenance allowance u/s 125 of the Code of Criminal Procedure (in short "the Code") at the rate of Rs. 500/- per month from the date of filing of the application i.e. 26.3.91 and the due arrears of maintenance be paid till 8.10.98 and further the maintenance be paid till 15th of every month.

2. The case of the opposite party is that she was married with the Petitioner in the year 1986 and thereafter the Petitioner started demanding dowry. It has been alleged that the Petitioner and his family members were assaulting her and lastly drove her out from the house. During the pendency of the case the parties had compromised and a compromise petition was filed. After compromise the opposite party came to her Sasural but the Petitioner again started torturing and demanding dowry. It has been further stated that the Petitioner is a good tailor master and having 20 Bighas of land, a shop of two rooms and a Pucca building

of five rooms. It has been alleged that the Petitioner is having illicit relation with his own Bhabhi and another lady.

3. The case of the Petitioner is that the opposite party is his legally married wife and the allegation made by the opposite party is totally false, concocted and baseless. The Petitioner is ready to keep his wife with him. But, it has been alleged, the opposite party is having illicit relation with her brother-in-law and due to this reason she does not want to live with the Petitioner.

4. In this case both the parties adduced evidence and after consideration the impugned order was passed. Learned Counsel for the Petitioner submitted that the order impugned is bad since the opposite party has failed to prove the ingredients of Section 125 of the Code. As such, she is not entitled to any maintenance. He has referred certain portion of the evidence of the witnesses examined by the opposite party herself but all these are refuted by the opposite party and she has been stating that her life has become miserable due to constant mental and physical torture by the Petitioner as well as his family members. She had no alternative but to leave her husband's house. Thus provision of Section 125 of the Code for allowance for the maintenance of his wife is very much attracted. In this case there is no dispute about the marriage between the opposite party and the Petitioner. However, the evidence of witnesses does not show that she has or had any questionable relationship with any person. It has come in the evidence of the opposite party that her husband was not providing her food or money. Learned Counsel for the Petitioner has submitted that the opposite party has emphatically stated that her husband wants to take her back but she is not willing to go there. Accordingly, it has been submitted that she was been living at her parent's place on her own sweet will. Hence it cannot be said that the Petitioner has refused to maintain his wife. This point submitted by the learned Counsel is based on the simple statement of the opposite party but if her case is considered as a whole, it would appear that due to constant mental and physical torture she lost confidence in her husband and in-laws. She had to run away from her husband's house and she has stated these words in utter frustration. From consideration of the evidence of the opposite party and the witnesses examined by her it would be clear that under compelling circumstances she had to leave the house of her husband and was not willing to go back to in-laws house. The Petitioner has failed to bring any cogent material on the record to rebut the allegation made by her. The statement of the opposite party that her husband was not giving her food and other expenses also has not been denied or questioned even by way of suggestion. That apart, it is admitted that a criminal case u/s 323, 379 and 406/120B of the Indian Penal Code was filed by the wife before the police in which charge sheet had also been submitted. It has also been submitted and not rebutted that after filing of the case in which chargesheet was submitted, there was a compromise and accordingly the opposite party went to her husband's place. She lived there for 15 months and during that period also she was tortured both mentally and physically.

5. Learned Counsel for the Petitioner has also submitted that the evidence of the witnesses was not properly discussed by the learned Magistrate. However, after going through the record it appears that the learned Magistrate has discussed the evidence of both the parties and by cogent reason rejected the evidence adduced by the Petitioner. There is also nothing to show that she has any source of income or her father is capable enough to maintain her. Thus on consideration of entire record together with the evidence of witnesses of the parties I find no error of record or illegality or irregularity in the order impugned. That being so I do not find any good reason to interfere with the impugned order.

6. However, the maintenance which has been allowed from the date of filing of the application, needs modification to the extent that it shall be effective from the date of the impugned order. Therefore, the Petitioner is directed to pay the arrears of maintenance from the date of the order impugned in 24 equal monthly installments. The regular maintenance will be paid by the Petitioner at the rate of Rs. 500/- per month as per the direction of the court below from the date of receipt/production of a copy of this order. Accordingly, with the aforesaid modification this revision petition is dismissed.