
(2020) 01 JH CK 0013
In the Jharkhand High Court
Case No : Criminal Revision No. 491 of 2016

Bijay Singh

APPELLANT

Vs

Alka Singh

RESPONDENT

Date of Decision : 10-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125, 125(4)
Hindu Marriage Act, 1955 — Section 9

Citation : (2020) 01 JH CK 0013

Hon'ble Judges : Shree Chandrashekhar, J

Bench : Single Bench

Advocate : Sanjay Prasad, Rashmi Kumar, S. K. Keshri

Final Decision : Dismissed

Judgement

1. The petitioner has challenged the judgment dated 31.03.2016 passed in Maintenance Case No. 77 of 2014 by which he has been directed to pay Rs. 7,000/- per month to his wife and Rs. 3,500/- per month each to both his daughters for their maintenance.

2. Mr. Sanjay Prasad, the learned counsel for the petitioner submits that mother of opposite party no. 1, who is the applicant under section 125 Cr.P.C, has stated that her daughter should stay with her husband and, therefore, it is evident that the opposite party no. 1 has no reasonable ground not to live in the company of her husband.

3. On such ground, Mr. Sanjay Prasad, the learned counsel for the petitioner submits that in view of sub-section 4 to section 125 Cr.P.C the wife of the petitioner is not entitled to claim maintenance from him.

4. The marriage between the parties is not disputed by the petitioner. He was married to O.P. No. 1 on 16.12.2001 according to Hindu rites and customs. His wife has pleaded that at the time of marriage sufficient dowry including Rs. 2,50,000/- in cash was given by her parents, however, about 15 days after the

marriage her husband and in-laws started demanding Rs. 5,00,000/- and a bike. Finally, she was driven out from her matrimonial home on 09.08.2013 and thereafter husband has not maintained her. The petitioner is working with M/s BCCL and at the time when the application under section 125 Cr.P.C was filed he was getting salary of Rs. 30,000/- to Rs. 35,000/- per month besides bonus of Rs. 70,000/- to Rs. 80,000/- per year. His wife has further claimed that he has income of Rs. 2,00,000/- per year from other sources. Her father is not alive and she is living with her mother and she has no independent source of income, though she has to maintain two minor daughters.

5. The petitioner has filed an application under section 9 of the Hindu Marriage Act seeking restitution of conjugal rites. He has stated that his wife has a parental house worth Rs. 50,00,000/- from which she is receiving monthly rental income of about Rs. 50,000/- per month.

6. In the proceeding of Maintenance Case No. 77 of 2014, the petitioner has examined himself as a witness and his wife has examined three witnesses. His wife has examined herself, her mother and brother in support of her claim that she and her daughter are entitled for maintenance from the petitioner.

7. The learned Principal Judge, Family Court has held thus:

7. After having heard the learned counsel for the parties and upon considering the oral as well as documentary evidence available on record, I am satisfied to find and hold that it is admitted that the appellant no. 1 is the legally wedded wife of opposite party Bijay Singh. It is also admitted that two daughters namely Sakshi Singh and Shristi Singh born out of their wedlock. It is admitted that the applicant and her daughters are not living with the opposite party since last two years and is residing at her maternal house. Admittedly, the opposite party is an employee of BCCL at Katras and according to him he is getting a salary about Rs. 27,000/- to 30,000/- per month. The applicant claims to be a house wife having no earning and nothing has been brought on record to belie the said contention. So far the plea raised on behalf of the opposite party regarding the income of applicant from her paternal house is concerned, no cheat of paper or any evidence has been brought on record to prove the fact that the applicant holds a house and is getting amount in lieu of rent. Hence, his testimony does not appear to be worthy of credence. Thus, it can be safely held that the applicant has no income of her own and she is not in a position to maintain herself and her two daughters. On the other hand, it has been established by the admission of the opposite party itself that he is employed as a mechanical fitter in BCCL at Katras since the year 2000 and at present he is getting a salary in between Rs. 27,000/- to 30,000/- per month. In other words it has been sufficiently proved that the applicant Alka Singh has no income of her own and she is unable to maintain herself and her two daughters and the opposite party has sufficient means to maintain the applicants. I am also of the considered view that applicant has got reasonable cause for not living with her husband and is forced to live in a pitiable condition at her maternal house."

8. From the evidences led by the parties in Maintenance Case No. 77 of 2014, I find that a stray statement of mother of the applicant no. 1 that her daughter should reside with her husband, which of course would be desire of every mother, and the application under section 9 of the Hindu Marriage Act filed by the petitioner are not such facts on the basis of which an inference can be drawn that the opposite party no. 1 has no reasonable ground to leave company of her husband.

9. Under section 125 Cr.P.C, a husband who has sufficient income is liable to maintain his wife and the minor child. The object behind section 125 Cr.P.C is to ensure that a wife and/or minor child does not suffer in penury.

10. Having examined the materials brought on record and keeping in mind the object behind section 125 Cr.P.C as well as the limitation of revisional jurisdiction [refer, "Sheonandan Paswan Vs. State of Bihar" reported in (1987) 1 SCC 288], I am not inclined to interfere in the matter and, accordingly, Criminal Revision No. 491 of 2016 is dismissed.