
(2010) 03 JH CK 0109
In the Jharkhand High Court
Case No : Criminal Revision No. 190 of 2010

Gulab Khan

APPELLANT

Vs

Nairun Nisha

RESPONDENT

Date of Decision : 19-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2010) 4 JLJR 138 : (2011) 2 DMC 454

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—This criminal revision is directed against the order impugned passed by the Principal Judge, Family Court, Lohardaga in a proceeding u/s 125 of the Code of Criminal Procedure in Maintenance Case No. 2 of 2009 by which the Petitioner-husband was directed to pay the maintenance amount at the rate of Rs. 1,000 per month to his wife-opposite party from the date of order by 15th day of each month.

2. Learned Counsel Mr. Banerjee assailed the order impugned on the ground that it was the definite case of the Petitioner-husband that he was suffering from paralytic disorder and was unable to perform daily basic needs and that he was getting rent, total to the tune of Rs. 800 from two of his shops in his share but ignoring these aspects learned Principal Judge, Family Court saddled the liability of Rs. 1,000 per month upon the Petitioner to which the Petitioner-husband is unable to pay. Admittedly, he was a driver and the opposite party was his wife and now she was living separately from him since long. Though, learned Principal Judge, Family Court considered these all aspects but concluded with the following observation:

From the discussions it is evident that the opposite party who is husband of the applicant has got house property from which he collects rent at the rate of Rs.

400 each. There are evidences that the opposite party has got four such rented house which are definitely permanent source of income.

Though the applicant has claimed that the opposite party has been running vehicle which chickens, and earns a regular income but without considering the earning from the vehicle plying the opposite party has got definitely permanent source of income and the opposite party must give maintenance to his wife the applicant who was living with the applicant for more than 37 years and accordingly the opposite party is directed to pay Rs. 1,000 per month as maintenance from the date of order regularly within 15th day of each month failing which the applicant shall be at liberty to take legal action against the opposite party.

3. Learned Counsel Mr. Banerjee submitted that learned Principal Judge lost sight of the fact that the Petitioner is suffering from paralysis and he has to meet the expenses incurred on his treatment and even if it could be assumed that he was getting Rs. 400 from each of his shop as rent, total to the tune of Rs. 1,600, then how the Petitioner would part with Rs. 1,000 to the wife in the backdrop that the Petitioner has another wife and children and is supposed to maintain them all.

4. In the circumstances, I find substance in the argument that learned Principal Judge, Family Court, Lohardaga without considering the source of income and paying capacity of the Petitioner-husband, awarded a sum of Rs. 1,000 to pay to the wife. Before awarding such amount, the Court was required to see the paying capacity of the Petitioner-husband as to whether he could pay the awarded amount in the given facts and circumstances, Petitioner had taken plea before Principal Judge that two of the shops were in the share of his son and in that manner, he was getting Rs. 800 only as rents from the remaining two shops and in such situation if I find error in the order impugned by which a sum of Rs. 1,000 per month was awarded to the wife without computing the income and paying capacity of the husband-Petitioner.

5. In the circumstances, the order impugned cannot be sustained under law. Accordingly, it is set aside with the direction to the Principal Judge, Family Court, Lohardaga to pass a reasoned order awarding maintenance to opposite party upon computing the income of the husband-Petitioner.

6. Accordingly, this petition is allowed.