
(2012) 03 JH CK 0092
In the Jharkhand High Court
Case No : Criminal Revision No. 205 of 2010

Gulam Jilani

APPELLANT

Vs

The State of Jharkhand and Sahira Bibi

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

Protection of Women From Domestic Violence Act, 2005 — Section 12

Citation : (2012) 03 JH CK 0092

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—This application is directed against the order dated 13th of January 2010 passed by the Sessions Judge, Jamtara in Cr. Appeal (D.V.) No. 18 of 2009, whereby learned court below affirmed the order dated 30.10.2009, passed by A.C.J.M. Jamtara in Cr. Misc. (D.V.) Case No. 35 of 2008, whereby petitioner was directed to pay maintenance to the opposite parties under the provisions of Protection of Women from Domestic Violence Act, 2005 (hereinafter to be referred as Act). Sri A.K. Kashyap, Sr. Advocate appearing on behalf of petitioner submits that as per proviso to Section 12 of the Act, it is imperative for the Magistrate to consider the report of Protection Officer. It is submitted that the learned Magistrate passed impugned order without considering the report of Protection Officer, thus the same is liable to be set aside. It is further submitted that petitioner divorced opposite party no. 2 on 30.05.2008, whereas application u/s 12 of the Act filed on 01.07.2008. Thus, on the date of application, opposite party no. 2 was not the wife of petitioner. Thus, aforesaid application is not maintainable. It is lastly submitted that there is no evidence to prove income of petitioner, therefore, maintenance allowance granted in favour of opposite party no. 2 is excessive.

2. On the other hand, Sri Ranjan Kumar Singh, learned counsel for the opposite party no.2 submits that there is nothing on record to show that Protection Officer

submitted any report in the court, thus, question of consideration of protection report does not arise. He further submits that divorce has not been proved in this case, thus, the learned court below rightly concluded that opposite party no. 2 is legally wedded wife of petitioner. He further submits that P.W.-1 and P.W.-4 stated that monthly income of petitioner is Rs. 10,000/- (Rs Ten thousand). He submits that petitioner did not examine himself as witness, therefore, he admits his income is Rs. 10,000/- per month.

3. Having heard the submissions, I have gone through the record of the case. There is nothing on record to show that protection officer submitted any report in the court below in connection with this case. Under the said circumstance, question of consideration of said report before passing impugned order does not arise. Thus, I find no substance in the first submission of Sri A.K. Kashyap.

4. On the point of divorce, petitioner relied upon the evidence of three witnesses out of whom O.P.W.-1 and O.P.W.-2 appears to be hearsay witness. The evidence of O.P.W.-4 (father of petitioner) appears to be contradictory. At one place he states that petitioner gave divorce by order of Court, whereas at another place he states that the petitioner pronounced divorce by sending letter through Registered post. No document filed to show that any Registered letter sent to opposite party no. 2. It is relevant to mention that petitioner did not choose to examine himself to prove the factum of divorce. Thus, the learned courts below rightly concluded that story of divorce not proved and appears to be false.

5. Now coming to third contention raised by Sri A.K. Kashyap, I find that P.W.-1 (Opposite party no. 2) and P.W.-2 (father of opposite party no.-2) categorically stated that income of petitioner is Rs. 10,000/- (Rs. Ten thousand). Petitioner did not choose to examine himself in rebuttal, therefore aforesaid evidence remain intact. Under the said circumstance, I find substance in the submission of Sri R.K. Singh that the petitioner has sufficient means to maintain opposite parties. In view of the discussions made above, I find no merit in this application. Accordingly, same is dismissed.