
(2015) 10 JH CK 0085

In the Jharkhand High Court

Case No : Criminal Revision No. 1198 of 2014

Haldhar Manjhi

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 05-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(3)
Limitation Act, 1963 — Section 5

Citation : (2015) 4 JLJR 423

Hon'ble Judges : Amitav Kumar Gupta, J.

Bench : Single Bench

Advocate : Naresh Prasad Sahu, for the Appellant

Judgement

Amitav Kumar Gupta, J.

I.A. No. 6451 of 2014

1. Learned counsel, for the petitioner, has submitted that the instant interlocutory application has been filed under Section 5 of the Limitation Act for condonation of delay of 18 days in preferring the present revision application. Learned counsels for the opposite parties have not raised any serious objection.

2. Heard. Considering the reasons assigned in paras-4 & 5 of the supporting affidavit, sufficient cause and reasonable explanation is made out for delay. Accordingly, the delay is, hereby, condoned.

3. Accordingly, I.A. No. 6451 of 2014 stands allowed:

Cr. Revision No. 1198 of 2014

This revision application is directed against the order dated 20.8.2014 passed by the learned Principal Judge, Family Court, Dhanbad in Maintenance Petition No. 194 of 2008, whereby the application under Section 125 Cr.P.C. filed by O.P. No. 2 was allowed and the petitioner was directed to pay maintenance @ Rs. 2,500/- per month to O.P. No. 2/wife.

4. Learned counsel, for the petitioner has submitted that the learned court below has failed to appreciate that the petitioner has solemnized a second marriage with the consent of O.P. No. 2 and O.P. No. 2 continued to live with the petitioner till August 2006. That the petitioner is a retired service man and getting pension of only Rs. 2,000/-. That he has to maintain his second wife and his son, who are dependent on him and the petitioner does not have any other source of income. That the court below should have considered the fact that O.P. No. 2 without any sufficient cause and reason has left the company of the petitioner, hence, she is not entitled to maintenance. That the maintenance granted is exorbitant and excessive considering the fact that the petitioner is drawing pension of Rs. 2,000/- only.

On the above grounds, learned counsel for the petitioner has submitted that the impugned order is fit to be set aside.

5. Learned counsel, for O.P. No. 2 has submitted that the petitioner has solemnized a second marriage and he kept O.P. No. 2 properly till 2005. That after a son was born from the second wife, the petitioner ill-treated O.P. No. 2 and drove her out of the house in August, 2006 and since then she has been residing at her parent's place. That the petitioner has admitted that he is getting pension of Rs. 4,000/- and also getting Rs. 2,000/- on account of his being ex-service personnel. That the impugned order does not suffer from any illegality or impropriety and the revision application is fit to be dismissed.

6. Heard. Perused the impugned order. No doubt as submitted by the learned counsel for the petitioner the witnesses have stated that the petitioner had solemnized a second marriage with the permission of O.P. No. 2, but this does not disentitle O.P. No. 2 from claiming maintenance. Under the provisions of Section 125(3) Cr.P.C., there is no estoppel under law for claiming maintenance and in Explanation of Section 125(3) Cr.P.C., it is stipulated that if a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him. The proviso of Section 125(3) also contemplates that even such person offers to maintain his wife on the condition of her living with him, and she refuses to live with him, the Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

7. It is evident that petitioner has admitted that he is getting Rs. 4,000/- from bank and Rs. 2,000/- being ex-service personnel and the trial court has appreciated the fact that the statement of the petitioner was recorded in 2011 and has also taken notice that over two years the dearness allowance must have increased. It is noticed that the petitioner had not produced the documents to show the actual pension he was receiving. In the given facts an inference can be drawn that he has suppressed his actual income and has not come with clean hands.

8. In the attending facts and circumstances, the grant of maintenance of Rs. 2,000/- by the court below is reasonable and justified and does not require any interference by this court. The petitioner is directed to comply with the order passed by the court below within two months from the date of this order. In the result, the revision stands dismissed.