
(2019) 01 JH CK 0007

In the Jharkhand High Court

Case No : Criminal Revision No. 223 Of 2016

Ikrar Khan @ Ekrar khan

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 07-01-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125, 125(4), 164
Indian Penal Code, 1860 — Section 313, 323, 379, 376, 498A, 504, 506

Citation : (2019) 198 AIC 379

Hon'ble Judges : Shree Chandrashekhar, J

Bench : Single Bench

Advocate : S.K. Tiwari, Sadhna Kumar

Final Decision : Dismissed

Judgement

1. The petitioner is aggrieved of the order dated 21.11.2015 passed in Misc. Case No. 11 of 2015 by which he has been directed to pay Rs.2500/- per month to his wife w.e.f 09.02.2015.

2. Briefly stated, marriage of the petitioner with O.P No. 2- Arshana Biwi was solemnized under the Muslim customs in the village-Sonpurwa, P.S- Manjhiaon, district- Garhwa. The wife of the petitioner at the time of Nikaah was aged about 7 years and that is the reason she did not join him in her matrimonial home at that time. However, his wife has asserted that on 25.05.2010 when his family members came with Baraat the marriage took place in the house of her parents. The petitioner has pleaded that after the marriage his wife stayed in her matrimonial home for about 1 month but thereafter she started leaving for her parents place frequently. The petitioner tried to resolve the issue, however, his wife left her matrimonial home without any just excuse. He has pleaded that he has sufficient reasons to doubt illicit relationship of his wife with one Naiyar Khan who is the brother-in-law of younger brother of his wife. In fact, his wife has lodged a case against the said Naiyar Khan alleging that he had committed rape upon her still, his wife has filed a petition under Section 125 Cr.P.C which was

registered as Misc. Case No. 11 of 2015. In the proceeding of Misc. Case No. 11 of 2015 the petitioner has examined himself, his maternal uncle and his mother as witnesses on his behalf and his wife has also examined three witnesses including herself. The petitioner has produced a certified copy of the First Information Report being Manjhiaon P.S Case No. 05 of 2015 corresponding to G.R. Case No. 32 of 2015 registered under Section 376/506 I.P.C and certified copy of the Final Form vide C.S. No. 31 of 2015 which contains statement of his wife recorded under Section 164 Cr.P.C. Wife of the petitioner has produced a copy of the First Information Report lodged by her against her husband and in-laws for the offences under Section 498A, 323, 379, 504/313 I.P.C and a copy of the application dated 04.03.2015 filed by her in G.R. Case No. 32 of 2015 which was marked as Exhibit-X for identification.

3. The trial Judge on appreciation of the evidence, oral as well as documentary, led by the parties in the proceeding of Misc. Case No. 11 of 2015 has come to a conclusion that the allegation of adultery levelled by the petitioner against his wife has not been proved and his wife who has no independent source of income is entitled for an order of maintenance against the petitioner.

4. Mr. S. K. Tiwari, the learned counsel for the petitioner has raised two-fold contentions viz. (i) the foundational fact assumed by the trial Judge for grant of maintenance to the petitioner's wife in a proceeding under Section 125 Cr.P.C is contrary to the admitted facts of the case, and (ii) the wife who is/was living in adultery cannot claim maintenance under Section 125(4) Cr.P.C from her husband.

5. The proceeding under Section 125 Cr.P.C is summary in nature and this provision is in the nature of a social and beneficial provision. In "Vimala (K.) Vs. Veeraswamy (K.) reported in (1991) 2 SCC 375", the object behind Section 125 Cr.P.C has been indicated by the Supreme Court in these words :

"3. Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. When an attempt is made by the husband to negative the claim of the neglected wife depicting her as a kept-mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage. The term 'wife' in Section 125 of the Code of Criminal Procedure, includes a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. The woman not having the legal status of a wife is thus brought within the inclusive definition of the term 'wife' consistent with the objective. However, under the law a second wife whose marriage is void on account of the survival of the first marriage is not a legally wedded wife and is, therefore, not entitled to maintenance under this provision. Therefore, the law which disentitles the second wife from receiving maintenance from her husband under Section 125, Cr.P.C, for the sole reason that the marriage ceremony though performed in the customary form lacks legal sanctity can be applied only

when the husband satisfactorily proves the subsistence of a legal and valid marriage particularly when the provision in the Code is a measure of social justice intended to protect women and children. We are unable to find that the respondent herein has discharged the heavy burden by tendering strict proof of the fact in issue. The High Court failed to consider the standard of proof required and has proceeded on no evidence whatsoever in determining the question against the appellant. We are, therefore, unable to agree that the appellant is not entitled to maintenance."

6. By now it is well-accepted that in cases where a criminal case has been lodged by the wife alleging harassment and torture in connection to demand of dowry the wife had a just reason to leave the company of her husband. It has been brought on record by the petitioner's wife that she has lodged a case against her husband and in-laws for the offences under Section 498A, 323, 379, 504/313 I.P.C which was registered as Manjhiaon P.S Case No. 05 of 2015 corresponding to G.R. Case No. 32 of 2015. The trial Judge has found that the petitioner's wife is not a working lady and, in fact, the petitioner has not pleaded and proved that his wife has independent source of income. Moreover, it is well-settled that some source of income of the wife is not a ground to deny maintenance to her under Section 125 Cr.P.C. The plea taken by the petitioner that his wife had adulterous relationship with Naiyar Khan has not been found proved by the trial Judge. The fact that his wife has lodged a case under Section 376 I.P.C against the said Naiyar Khan, which has ultimately failed and a Final Form was submitted by the police, is not a ground to find the allegation of adultery levelled by the petitioner against his wife proved.

7. The learned counsel for the petitioner has contended that statement of the petitioner's wife recorded under Section 164 Cr.P.C in G.R. Case No. 32 of 2015 must be treated admission of adultery by his wife.

8. In my opinion, this contention has been raised in ignorance of the fact that the criminal case lodged by the petitioner's wife is on the allegation of rape which obviously cannot be a fact to infer adulterous relationship of the petitioner's wife with Naiyar Khan. The petitioner's wife has examined herself and led sufficient evidence in Misc. Case No. 11 of 2015 to prima-facie establish validity of her marriage with the petitioner. Her witnesses have stood the test of cross-examination and they have denied the suggestion that the petitioner's wife has a bad character or that she had adulterous relationship with Naiyar Khan. In the aforesaid state of evidence, keeping in mind the limited revisional powers of this Court under which detailed re-examination of the evidence led by the parties is not permissible [refer, "Sheonandan Paswan Vs. State of Bihar" reported in (1987) 1 SCC 288], and keeping in view the categorical findings recorded by the trial Judge, that O.P neglected his wife and by making allegation of adultery with Naiyar Khan and Naseem etc., which he could not prove has been humiliating her and that she is not a working lady, I find that no ground has been made out by the petitioner for interference with the order dated 21.11.2015 passed in Misc.

Case No. 11 of 2015.

9. Accordingly, Criminal Revision No. 223 of 2016 is dismissed.