

(2016) 08 JH CK 0104

In the Jharkhand High Court

Case No : Cr. M.P. No. 1712 of 2015 With Cr. Revision No. 1485 of 2015.

Jagat Kishore Yadav (In both the cases) - Petitioner @HASH State of Jharkhand - Opposite Party

Date of Decision : 31-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Family Courts Act, 1984 — Section 9

Citation : (2016) 167 AIC 741

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Mr. Jay Prakash Jha, Senior Advocate, for the Petitioner; Mr. Manoj Kumar Sah, Advocate, for the Opposite Party Nos. 2, 3 and 4; Mr. Mukesh Kumar, A.P.P, for the State

Final Decision : Dismissed

Judgement

Mr. Rongon Mukhopadhyay, J. - Since common questions of law and fact are involved in both the cases the same are being disposed of by this common order.

Heard Mr. Jay Prakash Jha, learned senior counsel appearing for the petitioner, Mr. Manoj Kumar Sah, learned counsel appearing for the opposite party nos. 2, 3 and 4 and Mr. Mukesh Kumar, learned A.P.P.

2. In Cr. M.P. No. 1712 of 2015 the petitioner has challenged the order dated 12.05.2015 passed in Maintenance Case No. 64 of 2011 by the learned Principal Judge, Family Court, Godda by which the petitioner has been directed to make payment of Rs. 5000/- per month as interim maintenance in favour of the opposite party nos. 2, 3 and 4 and further directed to make payment of Rs. 1,50,000/- as lump sum arrears of interim maintenance from the date of the case.

3. Learned senior counsel appearing for the petitioner has raised a preliminary objection with respect to the legality or otherwise of the impugned orders by which interim order of maintenance was passed as well as the order dated 29.08.2015 by which a final order under Section 125 Cr.P.C. has been passed. It

has been submitted by the learned senior counsel for the petitioner that no attempts were ever made by the learned Principal Judge, Family Court, Godda to reconcile the differences between the parties which is the mandate of law in terms of the Section 9 of the Family Courts Act. Learned senior counsel submits that it is obligatory on the part of the learned Principal Judge, Family Court to have made attempts at a settlement and on failure in such attempts further steps should have been taken with respect to the case to be decided on merit and the same having not been done the impugned orders deserves to be quashed and set aside. Learned senior counsel for the petitioner in support of his contention relied upon a judgment in the case of Smt. Hina Singh v. Satya Kumar Singh reported in AIR 2007 (Jharkhand) 34.

4. Learned senior counsel further submits that the petitioner had filed a suit for restitution of conjugal rights under Section 9 of the Hindu Marriage Act which would further fortify the intention of the petitioner to reconcile with the opposite party no. 2 which fact has completely been ignored by the learned court below while entertaining the application under Section 125 Cr.P.C. without taking recourse to reconciliation between the parties.

5. Mr. Manoj Kumar Sah, learned counsel appearing for the opposite party nos. 2, 3 and 4, has submitted that the petitioner had also filed a suit for dissolution of marriage which was subsequently dismissed. Learned counsel has further submitted that a case under Section 498A of the Indian Penal Code had also been instituted against the petitioner by the opposite party no. 2. Learned counsel therefore submits that when the relationship between the petitioner as well as the opposite party o. 2 had broken down irretrievably there was no question of making any attempts for reconciliation.

6. In order to answer the contention which has been raised by the learned senior counsel for the petitioner it would be necessary to refer to Section 9 of the Family Courts Act, 1984 which reads as under:-

9. Duty of Family Court to make efforts for settlement. - (1) In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.

(2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Family Court to adjourn the proceedings.

7. In the case of Smt. Hina Singh v. Satya Kumar Singh (Supra) while considering Section 9 of the Family Courts Act and Section 23 of the Hindu Marriage Act it was held that it was obligatory for the Court to give a fair chance to a conciliated or negotiated settlement before adjudication is embarked upon. The observation of the Division Bench of this Court was primarily with respect to the family relations and other factors which are generally not found in other disputes. It further went on to hold that the main role of the Court is to discover a solution instead of breaking the family relations and it is the mandate of law as also the social obligation of the Court to make an earnest attempt for reconciliation.

8. Augmenting his arguments in the back drop of the judicial pronouncement as well as the provision of law as quoted above, learned senior counsel has submitted that no attempts were ever made by the learned Principal Judge, Family Court, Godda to try and settle the issue or reconcile the matter between the parties.

9. The lower court records which was called for as well as on perusal of the impugned judgment reveals that a criminal case under Section 498A of the Indian Penal Code was already instituted by the opposite party no. 2 against the petitioner. It further appears that although initially in the year 2006 a suit for restitution of conjugal rights was preferred by the petitioner but subsequently he had filed an application under Section 13 of the Hindu Marriage Act for dissolution of marriage with the opposite party no. 2 in the year 2010. In the said case which was registered as Matrimonial Case No. 39 of 2010 vide judgment dated 21.02.2012 the same was dismissed and as per the cross-examination of the petitioner he has preferred an appeal before this Court against the dismissal of his application under Section 13 of the Hindu Marriage Act. The maintenance case was instituted by the opposite party no. 2 in the year 2011 and just prior to institution of the said case a suit for dissolution of marriage was filed by the petitioner.

10. Section 9 of the Family Courts Act, 1984 does mandate the Family Court to make every endeavour at the first instance to persuade the parties to arrive at a settlement but as would be evident from a perusal of Section 9 (1) of the Family Courts Act, 1984 the same has put a note of caution inasmuch as where it is possible to do so consistent with the nature and circumstances of the case such persuasion can be made between the parties to arrive at reconciliation.

11. The factual situation as has been enumerated above do suggest that there was bad blood existing between both the sides which led the petitioner to institute a suit for dissolution of marriage in the year 2010 just prior to institution of the application under Section 125 Cr.P.C. by the opposite party no. 2. The suit was in addition to the criminal case instituted by the opposite party no. 2 under Section 498A of the Indian Penal Code against the petitioner and taking into consideration the said cases it could not have been obligatory on the part of the learned Principal Judge, Family Court, Godda to have entered into a

reconciliation or to try and get the matter settled between the parties.

The Procedure which has been adopted by the learned court below in the given facts and circumstance of the case seems to be justified. Even otherwise no favourable circumstance had occurred during the pendency of the proceeding under Section 125 Cr.P.C. so as to attempt at a reconciliation and to keep the case pending till such attempt in either way led to a positive or a negative result. In such situation, therefore, Section 9 of the Family Courts Act, 1984 is in no way helpful to the petitioner and the argument advanced by the learned senior counsel for the petitioner with respect to the question of law raised by him is answered against the petitioner. Apart from the question of law which has been raised by the learned senior counsel for the petitioner the facts leading to passing of the impugned orders do not also lead credence to the contention that the said orders have been passed not in accordance with law.

The impugned orders have considered the entire materials available on records and thereafter has come to a finding with respect to the payment of maintenance to the opposite party nos. 2, 3 and 4 in terms of the order dated 12.05.2015 granting interim maintenance to the opposite party nos. 2, 3 and 4 and having found no error or illegality in the impugned orders, these applications sans merit are, hereby, dismissed.