
(2019) 08 JH CK 0174

In the Jharkhand High Court

Case No : Criminal Revision No. 888 Of 2015

Jamil Akhtar @ Md. Zamil Akhtar

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 09-08-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125, 127

Citation : (2019) 08 JH CK 0174

Hon'ble Judges : Shree Chandrashekhar, J

Bench : Single Bench

Advocate : Anjani Kr. Singh, Ashok Kumar, Ruby Parween

Final Decision : Dismissed

Judgement

1. The petitioner has challenged the order dated 28.04.2015 passed in Miscellaneous Case No. 08 of 2013 by which the maintenance amount awarded to his step mother has been enhanced from Rs. 1,500/- per month to Rs. 3,000/- per month.
2. The learned counsel for the petitioner referring to the judgment in "Kirtikant D. Vadodaria Vs. State of Gujarat and Another" reported in (1996) 4 SCC 479 submits that only a step mother who has no children can seek maintenance from the children born from her first marriage, whereas O.P. No. 2 has two grown up children from her first marriage.
3. Another contention raised on behalf of the petitioner is that the Award of Lok Adalat cannot be modified in a petition filed under section 127 Cr.P.C.
4. On this issue, I intend to record that the Award of the Lok Adalat is made in a proceeding under section 125 Cr.P.C and it was not under challenge in the proceeding under section 127 Cr.P.C. Both the proceedings are independent proceedings and section 127 Cr.P.C is not in the nature of an appeal.
5. There is no dispute that the petitioner is the son of Mahmood Allam with

whom O.P. No. 2 has contracted second marriage after taking divorce from her first husband, namely, Rafique Mistry. Father of the petitioner, namely, Mahmood Allam was employed under Santhal Colliery and after marriage with O.P. No. 2 he died. After his death, compassionate appointment was offered to the petitioner by M/s BCCL as an Operator and some monetary benefits were paid to O.P. No. 2. She instituted the petition under section 125 Cr.P.C seeking maintenance from her step son, the petitioner. On 24.04.2010, an Award was passed on a compromise between the parties. The petitioner was directed to pay Rs. 1,500/- per month as maintenance to O.P. No. 2. Four years thereafter O.P. No. 2 has instituted a petition under section 127 Cr.P.C on two grounds, namely, salary of the petitioner was enhanced and in the last four years her expenses towards maintenance has gone up.

6. A reading of the order dated 28.04.2015 would reflect that an effort for conciliation was taken, however, it failed and thereafter the petitioner was permitted to file his response.

7. In the proceeding under section 127 Cr.P.C, inspite of opportunities granted, the petitioner has failed to lead any evidence. O.P. No. 2 has examined herself and deposed in the Court that she has no source of income to maintain herself and the petitioner's salary is more than Rs. 51,000/- per month.

8. The learned Family Court Judge has observed as under :

9. After closure of arguments on behalf of the petitioner, opportunities was afforded to the O.P to lend his assistance to the court and make submissions. However, records reflects that despite repeated warning and sufficient opportunity being given to the O.P, but no arguments were advanced on his behalf by his learned counsel and therefore, this court was constrained to close the arguments on behalf of O.P too. As such, the argument of O.P was closed and the case was fixed for order.

10. Upon careful scrutiny of the records and evaluation of materials and evidence available therein, it emerges that undoubtedly the petitioner is receiving Rs. 1,500/- per month regularly from the O.P, as maintenance amount for herself. The petitioner has tried to demonstrate that she is unable to do so as the amount of Rs. 1,500/-, which she has been receiving, is largely spent on food, clothing and medicines and she, therefore, is unable to spare any money from the said amount."

9. I find that the view taken by the learned Judge is correct and proper. He has formed an opinion after considering the facts and overall circumstances in the case.

10. In the context of the decision in "Kirtikant D. Vadodaria", I intend to record that the facts in the present case are entirely different from the facts in "Kirtikant D. Vadodaria". In the present case, the petitioner has been offered compassionate appointment for which O.P. No. 2, being the wife, had first right

of preference in law. In any event O.P. No. 2 is entitled for maintenance from the petitioner in lieu of the compassionate appointment given to him; one of the conditions of his appointment is that he has to maintain O.P. No. 2.

11. In the above facts, particularly keeping in mind limitations of the revisional jurisdiction, I am not inclined to interfere with the order dated 28.04.2015 passed in Miscellaneous Case No. 08 of 2013

12. Accordingly, Criminal Revision No. 888 of 2015 is dismissed.

13. The petitioner is directed to comply with the order dated 28.04.2015 passed in Miscellaneous Case No. 08 of 2013, if already not complied, within four weeks failing which he shall pay interest @ 7% per annum on the balance amount.