
(2012) 11 JH CK 0069
In the Jharkhand High Court
Case No : Criminal Revision No. 119 of 2005

Jhagru Mahto

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Citation : (2013) 1 JLJR 574

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Sanjay Kumar Sinha, for the Appellant; S.K. Srivastava for the State, Rajesh Prasad and M.B. Lal for the O.P. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Harish Chandra Mishra, J.—Heard learned counsel for the petitioner and learned counsel for the opposite parties. The petitioner is aggrieved by the order dated 7.1.2005 passed by the learned Principal Judge, Family Court, Dhanbad, in Cr. Misc. Case No. 35 of 2003, whereby the application filed by the petitioner for setting aside the order dated 20.11.2003 passed in M.P. Case No. 237 of 2002 by learned Principal Judge, Family Court, Dhanbad, granting maintenance to the deserted wife to the tune of Rs. 1,000/- per month, has been rejected by the Court below.

2. It appears that opposite party No. 2, who is the deserted wife of the petitioner, had filed application for maintenance in the Court below, which was registered as M.P. Case No. 237 of 2002. Claiming herself to be the legally wedded wife of the petitioner and also stating that the petitioner had taken another wife, the opposite party No. 2, filed the application for maintenance. It appears from the record of said M.P. Case No. 237 of 2002 that the petitioner therein adduced her evidence and closed her evidence on 2.8.2003. Thereafter, the case was fixed for 3.9.2003 for the evidence of this petitioner in the Court below. On the date fixed, the petitioner did not appear in the Court below upon calls, even though attendance was filed on his behalf. The Court below gave further opportunity to

the petitioner and fixed another date as 20.11.2003 making it clear that if the petitioner failed to appear on that date, his evidence would be closed. On the said date also, the petitioner did not appear and accordingly, the Court below closed the evidence of the petitioner and passed the order, whereby on the basis of the evidence brought on record, maintenance of Rs. 1,000/- per month was allowed to the deserted wife i.e. opposite party No. 2.

3. Subsequently, the petitioner filed Cri. Misc. Case No. 35 of 2003 in the Court below for setting aside the order dated 20.11.2003 passed in M.P. Case No. 237 of 2002, taking the plea that on the said date i.e., on 20.11.2003, he was suffering from Diarrhoea. In the said case, opposite party No. 2, wife of the petitioner was noticed and both the parties appeared and adduced their evidence. It appears from the record that the petitioner examined himself as P.W. 1, wherein, he deposed that on 20.11.2003, he did not come to the Court because of the fact that he was suffering from Diarrhoea. No medical evidence was adduced before the Court below. However, he admitted in his evidence that on 20.11.2003, he had joined his duty in BCCL and he worked there on 20.11.2003 as also on 21.11.2003. Opposite Party No. 2 was examined as O.P.W. 1. The Court below on the basis of the evidence brought on record came to the conclusion that a false ground was taken by the petitioner that he was suffering from Diarrhoea as in his evidence, he had admitted that he was working in colliery on 20.11.2003. and 21.11.2003 and accordingly, the Court below dismissed the application filed by the petitioner for setting aside the order dated 20.11.2003 passed in M.P. Case No. 237 of 2002.

4. Learned counsel for the petitioner has submitted that the impugned order passed by the Court below is absolutely illegal, as on the given date, the petitioner was suffering from Diarrhoea and accordingly, he could not appear in the Court below and his evidence was closed and order was passed. Learned counsel accordingly, submitted that the impugned order cannot be sustained in the eyes of law.

5. Learned A.P.P. for the State, as also learned counsel for opposite party No. 2, on the other hand, have opposed the prayer and have submitted that from the very evidence of the petitioner, it was apparent that the petitioner had made a false claim as he had admitted in his evidence that on 20.11.2003 and 21.11.2003, he was working in colliery. The Court below taking into consideration the fact that false claim was made by the petitioner, rejected the application filed by the petitioner. Learned counsel accordingly, submitted that there is no illegality in the impugned order passed by the Court below worth interference in the revisional jurisdiction.

6. After hearing learned counsel for both parties and upon going through the materials on record, I find force in the submission of learned counsel for the opposite parties. The petitioner cannot be allowed to sustain his case on the false pretext. At one hand, the petitioner claimed that he was suffering from Diarrhoea, due to which he did not appear in the Court below for his evidence,

but on the other hand, he admitted in the Court below that he worked in colliery on 20.11.2003 as also on 21.11.2003. In view of these facts, I am of the considered view that the Court below was perfectly justified in rejecting the application filed by the petitioner. There is no illegality and/or irregularity in the impugned order worth interference in the revisional jurisdiction. There is no merit in this revision application, which is, accordingly, dismissed. Let the Lower Court Records be sent back to the Court concerned forthwith.