
(2022) 01 JH CK 0014

In the Jharkhand High Court

Case No : Criminal Revision No. 641 Of 2014

Kaleshwar Rabani

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 24-01-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125, 313
Indian Penal Code, 1860 — Section 498A
Dowry Prohibition Act, 1961 — Section 4

Citation : (2022) 01 JH CK 0014

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : Lalan Kumar Singh, Lily Sahay, Shailendra Jit

Final Decision : Dismissed

Judgement

Anubha Rawat Choudhary, J

1. Heard Mr. Lalan Kumar Singh, learned counsel appearing on behalf of the petitioner.

2. Heard Mr. Shailendra Jit, learned counsel appearing on behalf of the Opposite Party Nos.2 and 3 and Ms. Lily Sahay, learned counsel appearing on behalf of the State.

3. This criminal revision application has been filed against the order dated 15.05.2014 passed by the learned Principal Judge, Family Court, Hazaribag

in M. Case No. 08/2009 under Section 125 of Cr.P.C. on an application filed by Opposite Party Nos.2 and 3 whereby and whereunder the petitioner

has been directed to pay Rs.3,000/- per month to the Opposite Party No.2-Geeta Devi and Rs.1,000/- per month to the Opposite Party No.3-Bharti

Kumari as maintenance allowance from the date of filing of the application i.e.

27.01.2009.

Arguments on behalf of the petitioner

4. Learned counsel for the petitioner submitted that the impugned order passed under Section 125 of the Code of Criminal Procedure is fit to be set-aside, inasmuch as, the order of maintenance was passed on the basis of conviction of the petitioner for the offences under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act and against the said order of conviction, an appeal was pending. But during the pendency of the present petition, the said appeal has been decided and the judgment of conviction under Section 498A of the Indian Penal Code and Section 4 of Dowry Prohibition Act has been set-aside by the appellate court as the marriage itself could not be proved. He submitted that once the marriage could not be proved in the criminal case, the impugned order, being based on the conviction in the criminal case, is also fit to be set-aside. Thus, it is proved beyond doubt that the petitioner is not the husband of the Opposite Party No.2 and therefore, the impugned order of maintenance treating the petitioner as husband of the Opposite Party No.2 is perverse and is fit to be set-aside.

Arguments on behalf of the Opposite Parties

5. The learned counsel appearing on behalf of the Opposite Party Nos.2 & 3, on the other hand, opposed the prayer and submitted that the impugned order was passed not only by considering the conviction of the petitioner in the criminal case for the offences under Section 498A of the Indian Penal Code and Section 4 of Dowry Prohibition Act, but also considering the evidence of the applicant i.e. the Opposite Party No.2 and her cross-examination. He submitted that during cross-examination, it was put to the applicant that she was forcibly wedded to the petitioner in the temple under pressure of the police personnel from thana, which she denied. She was also cross-examined by putting a question that the Satpati was also not performed, which she again denied. The learned counsel submitted that the trend of cross-examination of the applicant itself indicates that the petitioner was questioning the marriage by cross-examination on the point that the marriage was performed by force and/or the rituals of the marriage were not completed.

6. The learned counsel for the private opposite parties further submitted that the

evidence of the applicant/Opposite Party No.2 has been supported by the other witnesses produced by her.

7. He also submitted that it is not in dispute that the applicant was initially married to the elder brother of the petitioner in the year 1991 and when the elder brother expired, second marriage of the applicant was performed with the petitioner-her brother-in-law in the year 1999. Out of the first

marriage of the applicant, one girl child was born and out of her second marriage with the petitioner, another girl child was born. He submitted that at

the stage of passing order under Section 125 of Code of Criminal Procedure, only prima facie finding is required to be recorded regarding marriage

and therefore, acquittal of the petitioner in the criminal case, where the marriage could not be proved, has no bearing in the present matter. He

submitted that the only remedy which could be available to the petitioner is to file a civil suit regarding marriage/declaration of his marital status vis-À -

vis the applicant. He submitted that the impugned order has been passed on the basis of two distinct materials i.e. conviction of the petitioner under

Section 498A of the Indian Penal Code and Section 4 of Dowry Prohibition Act (which was subsequently set-aside) and also upon the appreciation of

evidences which had come during the proceedings under Section 125 of Code of Criminal Procedure. He submitted that merely because of the fact

that the petitioner has been acquitted in the criminal case, the same will not amount to erasing the other materials on record regarding the marriage

between the parties. He submitted that acquittal of the petitioner in the criminal case has no bearing in the present matter as the impugned order of

maintenance is sustainable on the basis of other materials available on record which have been duly appreciated by the learned court below while

passing the impugned order and accordingly, the impugned order is neither illegal, nor perverse, nor suffers from any material irregularity calling for

any interference in revisional jurisdiction.

8. The learned counsel also submitted that after the order of maintenance passed by the learned court below, no amount has been paid to the Opposite

Party No.2 and she as well as her daughter has been deprived of the maintenance amount.

9. The learned counsel appearing on behalf of the Opposite Party-State also opposed the prayer and submitted that the impugned order does not call

for any interference.

Rejoinder arguments on behalf of the petitioner

10. In response, the learned counsel for the petitioner submitted that he is also ready for D.N.A. test to find out as to whether the second daughter of the applicant/Opposite Party No.2 is the daughter of the petitioner or not.

Findings of this Court

11. After hearing the learned counsel for the parties and going through the impugned judgment and the materials on record, this Court finds that

Maintenance Petition No.08 of 2009 was filed by the two applicants namely, Geeta Devi and her daughter namely, Bharti Kumari under Section 125

of Code of Criminal Procedure stating that Geeta Devi is the legally married wife of the present petitioner and the marriage was solemnized in the

year 1999 at Durga Mandir Gola as per Hindu Customs. Thereafter, she went to her matrimonial home, lived with the present petitioner as husband

and wife at Village- Gola, District- Hazaribagh and out of the wedlock, a daughter namely, Bharti Kumari was born. The daughter is living with her

mother Geeta Devi. The further case of the applicant Geeta Devi was that she was first married with Niranjan Rabani, the elder brother of the

present petitioner and a daughter namely, Arti Kumari was born who is residing at Gola. After death of Niranjan Rabani, with consent of all the family

members, second marriage of the applicant Geeta Devi was solemnized with the present petitioner. Further case was that the petitioner and his family

members demanded Rs.30,000/- and one motorcycle from the mother and brother of the applicant Geeta Devi. The father of the applicant Geeta Devi

had died earlier. On account of non-fulfillment of the demand, she was tortured and consequently she was forced to go to her mother's house.

Ultimately, the applicant Geeta Devi instituted a criminal case against the present petitioner and his family members which was numbered as T.R. No.

475 of 2008 / G.R. No. 3525 of 2005 and all the accused persons were convicted by the court of the learned S.D.J.M. Hazaribag on 08.09.2008 for

the offences under Section 498A of the Indian Penal Code and Section 4 of Dowry Prohibition Act. The applicant Geeta Devi and her daughter,

having no source of income, are unable to maintain themselves and consequently, the application for maintenance was filed. The applicants claimed

maintenance of Rs. 5,000/- per month for Geeta Devi and Rs.2,000/- per month

for Bharti Kumari.

12. The present petitioner appeared and filed his show-cause stating that the applicant-Geeta Devi is not his legally married wife and she is the widow

of his elder brother namely, Niranjan Rabani. He further stated that as per the evidence of the applicant in the court of the learned S.D.J.M.,

Hazaribag in Gola P.S. Case No. 111 of 2005 / G.R. No. 3525 of 2005, the applicant Geeta Devi was earlier married in the year 1998 to his elder

brother Niranjan Rabani who died in the year 2001. He further stated that no marriage was solemnized between him and the applicant. He further

stated that an appeal being Criminal Appeal No. 160 of 2008 has been filed before the court of the learned District & Sessions Judge, Hazaribag

against the judgment of the learned S.D.J.M., Hazaribag and the matter is subjudice. The petitioner further stated that he is a poor labour and he is

somehow maintaining himself and his three brothers and is living in a small house.

13. Altogether three witnesses were examined from the side of the applicant Geeta Devi and she examined herself as P.W.-1 and fully supported her

case. In her cross-examination, she denied the suggestion that she was forcefully wedded with the present petitioner by the persons posted at the local

police station. She further denied the suggestion that only exchange of garlands had taken place. She further stated that the petitioner is working as

mason in Gola and she is living at her mother's house and the present petitioner is not maintaining her. She again denied the suggestion that she

was forcefully wedded with the petitioner. The learned court below, while scrutinizing the evidence of the applicant-Geeta Devi examined as P.W.-1,

was of the view that the trend of the cross-examination of the applicant indicates that the petitioner has accepted his marriage with the Opposite Party

No.2 and she has fully supported her case.

14. P.W.-2, Ram Awtar Ram stated that both the parties are known to him and the Opposite Party No.2 was married with the petitioner as per Hindu

rites and customs in Durga Mandir near Gola police station and after the marriage, she stayed in her matrimonial house for some days and a daughter

was born out of the wedlock. Subsequently, demand of dowry was made and after assaulting her, she was ousted from her matrimonial house and

then in the criminal case, the petitioner and his family members were convicted.

He further stated that the Opposite Party No.2 was earlier married with the elder brother of the petitioner and after his death, her marriage was performed with the petitioner. He also supported the fact that the petitioner is working as mason and is also a contractor and also does agriculture works and his income is Rs.14,000/-, but he is not maintaining the applicants. The learned court below was of the view that P.W.-2 has supported the facts of solemnization of marriage between the petitioner and the Opposite Party No.2 and she is living in her parental house and the petitioner is not maintaining her and the petitioner has sufficient source of income and that P.W.-2 has also fully supported the evidence of the Opposite Party No.2.

15. P.W.-3, Rajesh Ram deposed that he knows both the parties and has fully supported all the facts of the case of the applicants as stated by P.W.-

2.

16. So far as the petitioner is concerned, he examined altogether three witnesses and he himself examined as D.W.-1. he stated that the Opposite

Party No.2 was married to his elder brother and out of the wedlock, one daughter namely, Arti Kumari, aged 17 years, was born and he has been

looking after her. He further stated that after death of his elder brother, the Opposite Party No.2 started living at her parental house. He denied his

marriage with the Opposite Party No.2 and also denied any matrimonial relationship with her. In cross-examination, he stated that in the year 2005, he

and his brothers were convicted for offence under Section 498A of the Indian Penal Code and also under the Dowry Prohibition Act. He further

stated that as per his knowledge, the Opposite Party No.2 has only one daughter and not two, and if she has any other daughter (Opposite Party

No.3), he has no knowledge about it and stated that he has no knowledge as to whether there is a second applicant namely, Bharti Kumari in the case.

17. The learned court below considered the evidence of D.W.- 1 (the present petitioner) and observed that he had given suggestion to the Opposite

Party No.2 regarding forceful marriage at the instance of the persons at police station, which she had denied and the petitioner has also denied having

any knowledge about the fact that there is a second applicant in the present case who has claimed to be the daughter of the Opposite Party No.2. The

learned court below found that the petitioner himself stated that the elder daughter of the Opposite Party No.2 is staying with him, but the elder

daughter has not been examined as a witness in the case and accordingly, the petitioner is suppressing the true facts of the case.

18. The D.W.-2, Naresh Ram Rabani stated that the elder brother of the petitioner expired in the year 1995 with whom the Opposite Party No.2 was married. Upon scrutinizing the evidence of D.W.-2, the learned court below found that D.W.-2 is the younger brother of the present petitioner and stays with him and he is not an independent witness.

19. D.W.-3, Suresh Munda stated that Niranjana Rabani was married with the Opposite Party No.2 in the year 1991 and Niranjana died in the year 1995 and thereafter, the Opposite Party No.2 went to her parental house. He further stated that the elder daughter namely, Arti is being looked after by the present petitioner. In cross-examination, he stated that he has no idea as to whether the Opposite Party No.2 was married with the petitioner in temple. He also expressed his ignorance as to whether the Opposite Party No.2 lived with the petitioner even after the death of Niranjana and she has another daughter namely, Bharti Kumari from the petitioner. The learned court below found that D.W.-3 has not denied about the marriage between the petitioner and the Opposite Party No.2, nor he has denied the birth of the second child of the Opposite Party No.2 from the present petitioner, but has expressed his ignorance about this fact.

20. The learned court below referred to the fact that the petitioner and his family members were convicted for the offences under Section 498A of the Indian Penal Code and Section 4 of Dowry Prohibition Act and also referred to the statements of the petitioner under Section 313 Cr.P.C. in the criminal case wherein he had not denied the factum of marriage between the petitioner and the Opposite Party No.2. The learned court below also considered the pendency of the appeal against the judgment of conviction being Criminal Appeal No. 160 of 2008 and considered the order dated 18.12.2013 passed in Criminal Appeal No. 160 of 2008 which indicated that the criminal appeal was pending. The learned court below ultimately considered the specific stand of the petitioner taken in the present maintenance case and the trend of cross-examination of the Opposite Party No.2 in the present case who has been examined as P.W.-1, which was suggestive of the fact that the petitioner claimed that he was forcefully married to the Opposite Party No.2, but such forceful marriage was denied by the Opposite

Party No.2 and the specific case of the Opposite Party No.2 was that she was legally married. The learned court below ultimately held that the applicant-Opposite Party No.2 is the legally married wife of the petitioner and one daughter i.e. Applicant No.2-Opposite Party No.3 was born out of wedlock and in spite of having sufficient income, the petitioner is not maintaining the applicants and passed the order accordingly.

21. The specific case of the petitioner before this Court is that in the criminal case, against which appeal was pending before the learned appellate court, the judgment has been rendered on 29.04.2015 wherein the appellate court held that the prosecution has not been able to prove the marriage and consequently, there was no scope of demand of dowry and torture and P.Ws.- 1 to 5 were declared hostile by the prosecution. Therefore, the appellate court in the criminal case was of the view that the prosecution has failed to prove the charges against the appellants therein beyond all reasonable doubts and the judgment of conviction was set-aside.

22. The learned counsel for the petitioner has specifically argued that once the judgment of conviction in the criminal case under Section 498A of the Indian Penal Code and Section 4 of Dowry Prohibition Act has been set-aside by the learned appellate court, which, according to the petitioner, was the sole basis for passing the order under Section 125 of Code of Criminal Procedure, the impugned order passed under Section 125 of Cr.P.C. is fit to be set-aside.

23. This Court finds that the learned court below did not base its findings solely on the ground of conviction of the petitioner and his family members for offences under Section 498A of the Indian Penal Code and Section 4 of Dowry Prohibition Act in the criminal case, but also appreciated the materials on record including the trend of cross-examination of P.W.-1 i.e. the Applicant No.1 (Opposite Party No.2 herein) in the present case as well as the cross-examination of the D.W.-1 "the present petitioner and also the evidence of the other witnesses. Accordingly, even if the acquittal of the petitioner for offences under Section 498A of the Indian Penal Code and Section 4 of Dowry Prohibition Act is taken into consideration, the same being not the sole material for grant of maintenance, this fact by itself is not sufficient to set-aside the impugned order granting maintenance.

This court finds that the impugned order of maintenance is still sustainable on

account of the other materials on record which have been duly discussed and considered by the learned court below.

24. This Court further finds that apart from the fact that the conviction under Section 498A of the Indian Penal Code and Section 4 of Dowry Prohibition Act has been set-aside, no other point regarding the finding of the learned court below based on the other materials on record has been challenged by the petitioner during the course of arguments.

25. This Court is of the view that the marital status between the petitioner and the Opposite Party No.2, which has been disbelieved in a criminal case, has no bearing in the present matter as the dispute regarding marital status is to be decided in a properly instituted suit and there is enough material on record to come to a prima-facie finding of marriage between the petitioner and the Opposite Party No.2. It further appears from the record that the Opposite Party No.2 had taken a specific stand regarding the marriage having been performed in Durga Mandir at Gola and the petitioner, while cross-examining the Opposite Party No.2 in the present case, had cross-examined her on the point of marriage having been forcefully performed under the force of the officers of the thana. Thus, the trend of cross-examination of the Opposite Party No.2 does not indicate complete denial of performance of some ceremony in connection with the marriage. Further, the petitioner in his evidence is completely silent regarding the existence of the Opposite Party No.3, who has been claimed to be the daughter of the present petitioner and Opposite Party No.2.

26. Considering these aspects of the matter, the impugned order does not become perverse only on account of acquittal of the petitioner and his other family members in the criminal case where the marriage could not be proved beyond all reasonable doubts. There are sufficient other materials on record to sustain the impugned order of maintenance.

27. In view of the aforesaid findings, the impugned order does not call for any interference in revisional jurisdiction of this court in absence of any perversity, illegality or material irregularity. Accordingly, this criminal revision application is hereby dismissed.

28. Consequently, the petitioner is directed to pay the total current maintenance allowance @ Rs.4,000/- per month (Rs.3,000/- + Rs.1,000/-) to the Opposite Party No.2 w.e.f. February, 2022 by 10th calendar day of every

succeeding month. The petitioner is further directed to pay the accumulated arrears of maintenance allowance, right from the date of filing of the maintenance case, in installments of Rs.10,000/- per month along with the current monthly installments to the Opposite Party No.2 till full payment of the total arrear amount accrued till date. On account of non-compliance of the aforesaid directions, the opposite parties no. 2 and 3 will be entitled to recover the entire arrears and current maintenance amount through the process of law and also take all measures against the petitioner as permissible under law.

29. Interim order, if any, stands vacated.

30. Pending interlocutory application, if any, is closed.

31. Let the Lower Court Records be sent back to the learned court below.

32. Let a copy of this order be communicated to the learned court below through FAX/email.