

(2015) 08 JH CK 0017

In the Jharkhand High Court

Case No : Criminal Revision No. 230 of 2014

Kamrul Ansari

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Evidence Act, 1872 — Section 106

Citation : (2015) 3 JLJR 601

Hon'ble Judges : Ravi Nath Verma, J.

Bench : Single Bench

Advocate : M.B. Lal and Rahul Kumar, for the Appellant; Pawan Kumar Choudhary, for the Respondent

Judgement

Ravi Nath Verma, J.—Challenge in this revision application is to the order dated 21.1.2014 passed by the Principal Judge, Family Court, Giridih in Maintenance Case No. 69 of 2011, whereby and whereunder on a petition filed by the present opposite party No. 2 under Section 125 of the Code of Criminal Procedure (in short "the Code"), the court below directed the present petitioner to pay a sum of Rs. 1,500/- per month as maintenance to his wife-opposite party No. 2 Ruksana Khatoun and a sum of Rs. 500/- per month each to one minor daughter and one son. At the instance of the present opposite party No. 2, a petition under Section 125 of the Code was filed in the Court of the Principal Judge, Family Court, Giridih on the allegation that her marriage with present petitioner Kamrul Ansari was solemnized on 3.4.2000 according to Muslim Custom and Rs. 1,00,000/- cash was given to the petitioner besides the ornaments worth Rs. 30,000/- and utensils etc. as a dowry. After marriage, she went to her Sasural and started living there with the petitioner and out of the wedlock, the present opposite party was blessed with one daughter and one son. It is further alleged that one more son was born but he died after one year. Whereafter, her husband and in-laws started demanding a motorcycle and Nokia Mobile Phone from her parents but due to non-fulfillment of their demand, she was subjected to physical

and mental cruelty. On 2.5.2010, she was brutally assaulted by the petitioner and his family members for which she was treated by a doctor. She was even ousted from her matrimonial house with her two minor children and since then she has been living with her parents. The opposite party had no any personal income to maintain herself and her minor children, she filed a petition for grant of maintenance claiming that her husband has sufficient means having income of Rs. 5,000/- per month from masonry work and sound income from cultivation.

2. It appears from the impugned order that after notice, the petitioner appeared in the court below and filed his show cause admitting his marriage with the present opposite party No. 2 and also admitted the opposite party Nos. 3 and 4 being his children, but denied to maintain them on the ground that he is still ready to keep the opposite party No. 2 along with her minor children with full dignity and honour. In the show cause, it is also stated that the opposite party No. 2 knowingly and intentionally left her Sasural and further denied that he earns handsome income from his work and from agriculture rather he is working as a helper of a Mason for his own survival and for survival of his parents, four minor sisters and one minor brother. The court below after scrutinizing the evidence available on record, directed the petitioner to pay the maintenance as indicated above. Hence, this revision.

3. Assailing the order impugned, Mr. M.B. Lal learned counsel appearing for the petitioner submitted that the court below failed to appreciate that in view of sub-section (4) of Section 125 of the Code, the opposite party No. 2 is not entitled to any maintenance as she had voluntarily left her matrimonial house. It was further submitted that the court below without appreciating the evidence adduced on behalf of the petitioner in right perspective and without considering the sufficiency of income of the petitioner, fixed the amount of maintenance and in absence of any documentary proof of income, the order impugned cannot sustain in the eyes of law.

4. Contrary to the above submissions, learned counsel for opposite parties submitted that in view of Section 106 of the Evidence Act, the burden of proving the income or the onus was upon the present petitioner but he failed to bring even a chit of paper before the court below or any positive evidence of his income.

5. After having heard the counsels and upon going through the order impugned, I find that the petitioner has not denied the factum of marriage between the parties and has not brought any evidence to show that the opposite party No. 2 left her matrimonial house with her own sweet Will and he had taken any step to bring her back. The petitioner has also not denied that opposite party Nos. 3 and 4 were not born after his conjugal relation with the opposite party No. 2. Admittedly, both parties are living separately. On the point of income of the petitioner, there is a clear averment of the opposite party No. 2 and other witnesses that this petitioner is earning Rs. 5,000/- per month from masonry work. However, the petitioner has denied the income but no positive evidence

has been brought from his side though the onus to prove this fact was upon him. Section 106 of the Evidence Act clearly speaks that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. What I find from the order impugned is that the court below has granted a very meager amount, which in the present time, is not sufficient to cater the needs of two persons. Hence, the grant of maintenance of Rs. 1,500/- per month to opposite party No. 2 and Rs. 500/- per month each to opposite party Nos. 3 and 4 cannot be said to be excessive by any parameter.

6. In the case of Santosh Vs. Naresh Pal, as also in the case of Parvati Ran Sahu Vs. Bishnu Sahu; (2002) 10 SCC 510, the ratio decidendi, which emerges out of the two above decisions on the scope of revisional court is that it is not open to the High Court in revision in a proceeding under Section 125 of the Code to re-examine the evidence for the purposes of arriving at a different conclusion and the court should not interfere and disturb the finding.

7. Thus, I do not find any illegality and/or irregularity in the order impugned passed by the court below worth interference in the revisional jurisdiction. Learned counsel for the petitioner has also not pointed out any cogent ground to interfere with the order impugned. Since, there is no merit in this application, the same is, accordingly, dismissed.