
(2009) 09 CHH CK 0024
In the Chhattisgarh High Court
Case No : Misc. Criminal Case No. 726 of 2005

Lochan Prasad

APPELLANT

Vs

Banmali

RESPONDENT

Date of Decision : 01-09-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 482

Citation : (2009) 4 CGLJ 438

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Advocate : P.K.C. Tiwary and Shashi Bhushan, for the Appellant; H.V. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

T.P. Sharma, J.—Quashment of the order dated 30-11-2004 passed by the 1st Additional Sessions Judge, Mahasamund in Criminal Revision No. 148/2004, modifying the order dated 9-3-2004 passed by the Judicial Magistrate First Class, Mahasamund, I in Misc. Criminal Case No. 11/2002 u/s 125 of the Code of Criminal Procedure, 1973 (for short "the code"), by invoking the inherent jurisdiction u/s 482 of the Code has been prayed by the Petitioner, who is son of the Respondent.

2. Brief facts leading to filling of this petition are that the Petitioner, who is son of the Respondent through first wife, is living separately from the Respondent.

The Respondent has filed an application u/s 125 of the Code against his son i.e. the Petitioner for maintenance on the ground of his inability to maintain himself and willful neglect by the Petitioner having sufficient means to maintain his father. The Petitioner has filed detailed reply and alleged that the Respondent is having sufficient means to maintain himself, he is residing with his second son born through his second wife who was having sufficient means to maintain the Respondent, but only with a view to harass him, the Respondent has filed

application for maintenance. The Petitioner is not having sufficient means and the Respondent is having sufficient means for his maintenance.

3. After affording opportunity of hearing to the parties, learned Judicial Magistrate First Class, Mahassmund has awarded maintenance of Rs. 500/- per month to the Respondent. Order of the Judicial Magistrate First Class was challenged in criminal revision and the said order was modified on the ground that both the sons of the Respondent are liable for maintenance and the amount of maintenance was reduced to Rs. 250/- per month.

4. I have heard learned Counsel for the parties, perused the order impugned and record of the Courts below.

5. Learned Senior Advocate appearing on behalf of the Petitioner argued that the Petitioner is under moral obligation to maintain his father and the Petitioner has categorically deposed in his statement that if his father will reside with him then he will maintain him even he will maintain his step-mother also and provide sufficient food and other things to his father and step-mother, but his father does not want to reside with him and only with a view to harass him, his father has filed application for maintenance. Learned Senior Advocate further argued that the Respondent has partitioned his land, area comprising of 10.05 acres which was recorded in the name of the Respondent, presently more than 4 acres of land is in possession of second son of the Respondent, about 4-5 acres of land has also been purchased by the Respondent in the name of the wife of his second son, 1.5 acres of land is in possession of the Respondent along with his second son and virtually about 10 acres of land is in possession the Respondent & his second son which is sufficient for maintenance of the Respondent, his wife, his second son and family of second son of the Respondent. Learned Senior Advocate placed reliance in the matter of Chaturbhuj Vs. Sita Bai, in which it has been held by the Apex Court that deserted wife earning some income does not disentitle her from claim of maintenance and the income not sufficient to maintain herself still makes her unable to maintain herself. Learned Senior Advocate further placed reliance in the matter of Ram Dew Shah and Anr. v. Jagan Nath Shah 2004 (17) AIC 950 in which the Gauhati High Court has held that claim of aged father for maintenance allowance by the children having sufficient means, father having source of income from rented house, his second wife also working person and father being able to maintain himself, there is no point to ask for maintenance.

6. On the other hand, learned Counsel for the Respondent opposed the petition and submitted that the Petitioner is son of the Respondent and he is under obligation to maintain his father who is unable to maintain himself. Although second son of the Respondent is also having land, but it does not absolve the Petitioner from maintenance of his father. Learned Counsel further submits that only meager and token amount of Rs. 250/- per month has been awarded to the Respondent against the Petitioner, therefore, the Petitioner has utterly failed to make out a case for quashment of the order impugned in terms of Section 482 of

the Code for invoking the inherent jurisdiction.

7. Factual matrix of the case on the basis of evidence adduced on behalf of the parties reveal that the Respondent, father of the Petitioner, has partitioned his land between his two sons including the Petitioner, himself and his daughters. The Respondent has retained only 1 1/2 acres of land for himself and has partitioned the remaining land between his both sons equally and both the sons are in possession of about 4 acres of land each. Second son of the Respondent from his second wife is also having lands, he is in possession of the land which he has received on partition and Anr. 4 acres of land which has been purchased in the name of his wife. This shows that second son of the Respondent is having sufficient property. This is not the case in which the Petitioner is not having sufficient means. The Respondent is the person who has given 4 acres of land to the Petitioner on partition. The Respondent himself has retained only 1 1/2 A acres of land. This shows the bona fide partition made by the Respondent who has retained only 1 1/2 acres of land for himself.

8. After appreciating the evidence, learned Judicial Magistrate First Class has awarded only Rs. 500/- per month to the Respondent which has been reduced to Rs. 250/- per month by the revisional Court, It is not disputed that the Petitioner is not under obligation to maintain his father. Taking into consideration the meager/ token amount of maintenance of Rs. 250/- per month awarded against the son who is in possession of 4 acres of land obtained from the Respondent on partition, I do not find any scope for interference with the order impugned.

9. Consequently, the petition is liable to be dismissed and it is hereby dismissed.