
(2019) 12 PAT CK 0154

In the Patna High Court

Case No : Criminal Revision No. 501 Of 2018

Md. Nijamuddin Ansari @ Nijamuddin @ Nijamuddin Ansari

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125

Indian Penal Code, 1860 — Section 498(A)

Dowry Prohibition Act, 1961 — Section 3, 4

Citation : (2019) 12 PAT CK 0154

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Ajay Kr Singh, Ramchandra Sahani

Final Decision : Dismissed

Judgement

Heard learned counsel for the petitioner and the learned A.P.P. for the State.

The present revision petition has been filed for setting aside the order dated 16.02.2018 passed by the learned Principal Judge, Family Court, Sitamarhi in Miscellaneous Case No. 159/2012 by which the learned court below has directed to pay a sum of Rs. 3,000/- per month by way of maintenance to the O.P. No. 2.

The brief facts of the case are that the opposite party no. 2 had filed a case bearing Miscellaneous Case No. 159 of 2012 before the learned court of Principal Judge, Family Court, Sitamarhi under the provisions of Section 125 Cr.P.C. for award of maintenance in her favour. In the said petition, the opposite party no. 2 has stated that her marriage with the petitioner herein was solemnized according to Muslim customs in the month of July, 2008 and at the time of marriage the parents of the opposite party no. 2 had given gifts and dowry, however, subsequently, the petitioner and her in-laws started demanding a sum of Rs. 50,000/- and on account of non-fulfillment of the said demand of dowry, the opposite party no. 2 is said to have been beaten and kicked out from her matrimonial home on 26.09.2010, whereafter, an F.I.R. was also registered

bearing Riga P.S. Case No. 208 of 2010 under Section 498A of the Indian Penal Code and Sections 34 of the Dowry Prohibition Act. It has been further stated in the said maintenance petition that the petitioner herein is neither keeping her with him nor maintaining her, hence the petitioner be directed to pay monthly maintenance to the opposite party no. 2.

The learned counsel for the petitioner has submitted that the petitioner is always ready and willing to keep his wife and maintain her but she is not ready to continue with her marital life and moreover, since the petitioner is a tailor by profession, the maintenance awarded by the learned court below i.e. a sum of Rs. 3000/- per month is quite excessive, hence the same deserves to be reduced.

I have heard the learned counsel for the petitioner and perused the materials on record as also the impugned order dated 16.02.2018 and I find that the said impugned order has been passed by the learned Principal Judge, Family Court, Sitamarhi after considering the evidence of four witnesses adduced by the opposite party no. 2 as also evidence of five defence witnesses and upon consideration of the entire matter in a just and legal manner. The learned court below has also come to a finding that after the opposite party no. 2 was kicked out of her matrimonial home, the petitioner herein had solemnized marriage with another lady within only a week, hence it cannot be conceived that the petitioner would keep the opposite party no. 2 with him with dignity and due respect despite presence of second wife, hence it is obligation of the petitioner to maintain his legally wedded wife i.e. the opposite party no. 2. The learned court below has further, after consideration of the facts and circumstances of the case, fixed a meager sum of Rs. 3,000/-per month as maintenance to be paid by the petitioner to his legally wedded wife i.e. opposite party no. 2.

At this juncture, it would be relevant to refer to a judgment rendered by the learned Three Judges' Bench of the Hon'ble Apex Court, reported in 2018(SCC on-line) SC 1643 (Reema Salkan vs. Sumer Singh Salkan), paragraph nos. 13, 14 and 16 whereof are reproduced herein below:-

"13. Be that as it may, the High Court took into account all the relevant aspects and justly rejected the plea of the respondent about inability to pay maintenance amount to the appellant on the finding that he was well educated and an able bodied person. Therefore, it was not open to the respondent to extricate from his liability to maintain his wife. It would be apposite to advert to the relevant portion of the impugned judgment which reads thus:

"79. The respondent during the cross examination has admitted that he too is B.Com, M.A.(Eco.) and MBA from Kentucky University, USA; the respondent is a Canadian citizen working with Sprint Canada and is earning Canadian \$(CAD) 29,306.59 as net Annual Salary. However, he has claimed that he has resigned from Sprint Canada on 23.11.2010 and the same has been accepted on 27.11.2010 and the respondent since then is unemployed and has got no source of income to maintain himself and his family.

80. In the instant case, the petitioner has filed the case under Section 125 Cr.P.C., 1973 for grant of maintenance as she does not know any skill and specialised work to earn her livelihood i.e. in paragraph 26 of maintenance petition against her husband. However, the respondent husband who is well educated and comes from extremely respectable family simply denies the same. The respondent husband in his written statement does not plead that he is not an able bodied person nor he is able to prove sufficient earning or income of the petitioner.

81. It is an admitted fact emerging on record that both the parties got married as per Hindu Rights and Customs on 24.03.2002 and since then the petitioner was living with her parents from 10.08.2002 onwards, and the parents are under no legal obligation to maintain a married daughter whose husband is living in Canada and having Canadian citizenship. The plea of the respondent that he does not have any source of income and he could not maintain the wife is no answer as he is mature and an able bodied person having good health and physique and he can earn enough on the basis of him being able bodied to meet the expenses of his wife. In this context, the observation made in *Chander Prakash v. Shrimati Shila Rani*, AIR 1968 Del 174 by this Court is relevant and reproduced as under:

"7.....an able bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in position to earn enough to be able to maintain them according to the family standard. It is for such ablebodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child."

82. The husband being an ablebodied person is duty bound to maintain his wife who is unable to maintain herself under the personal law arising out of the marital status and is not under contractual obligation. The following observation of the Apex Court in *Bhuvan Mohan Singh v. Meena*, AIR 2014 SC 2875, is relevant:

"3.....Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short "the Code") was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one.

In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitiy created where under she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.

(emphasis applied)

83. The respondent's mere plea that he does not possess any source of income ipso facto does not absolve himself of his moral duty to maintain his wife in presence of good physique along with educational qualification."

14. The view so taken by the High Court is unassailable. Indeed, the respondent has raised a plea to question the correctness of the said view, in the reply affidavit filed in this appeal, but in our opinion, the finding recorded by the High Court is unexceptionable.

16. We, therefore, direct the respondent to pay the enhanced maintenance amount, as determined in terms of this order, to the appellant within a period of eight weeks from today after duly adjusting the amount already deposited in Court/paid to the appellant till date. The appellant will be entitled to forthwith withdraw the maintenance amount deposited by the respondent in Court, if any. The impugned judgment of the High Court is accordingly modified in the aforementioned terms."

A bare perusal of the aforesaid judgment rendered by the Hon'ble Apex Court in the case of Reema Salkan (supra) would demonstrate that an able body young man is presumed to be capable of earning sufficient money so as to be able to reasonably maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is equally a well settled law that Section 125 Cr.P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman who left her matrimonial home so that some suitable arrangement can be made by the Court and she can sustain herself as also her children, if there are any, and it is the obligation of the husband to ensure that his wife leads a life in a similar manner as she would have lived in the house of her husband, hence it is the sacrosanct duty of the husband to render her financial support and he cannot take subterfuges to deprive her of the benefit of living with dignity, thus any plea by the husband that he does not possess any source of income, ipso facto does not absolve him of his moral duty to maintain his wife.

Having regard to the aforesaid principle of law evolved by the Hon'ble Apex Court

in the case of Reema Salkan (supra) as also in the case of Bhuwan Mohan Singh (supra) and Chandar Prakash (supra), this Court finds from the facts of the present case that the petitioner is under an obligation to maintain his legally wedded wife i.e. the opposite party no. 2 and the learned Principal Judge, Family Court, Sitamarhi, has awarded a meager amount of maintenance of Rs. 3,000/- per month vide the impugned judgment dated 16.02.2018, thus this Court is of the considered view that the maintenance amount so awarded by the learned court below is not excessive specially keeping in mind the spiraling inflation rate and high cost of living index, prevailing today.

Having regard to the aforesaid facts and circumstances of the case as also for the reasons mentioned herein above, this Court is of the opinion that neither there is any apparent error nor any infirmity in the impugned order dated 16.02.2018 passed by the learned Principal Judge, Family Court, Sitamarhi, hence the same does not require any interference. Accordingly, the present petition stands dismissed.