
(2005) 07 JH CK 0009
In the Jharkhand High Court
Case No : M.A. No. 181 of 2004

Nasreen Begum @ Nasreen Khatoon

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-07-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11
Criminal Procedure Code, 1973 (CrPC) — Section 125
Family Courts Act, 1984 — Section 19, 19(1)

Citation : (2006) CriLJ 326 : (2006) 1 RCR(Criminal) 589 : (2005) 3 JLJR 690 : (2005) 3 JCR 371 : (2005) 2 DMC 764 : (2005) 34 AllIndCas 88 : (2005) AIR Jhar HCR 2284

Hon'ble Judges : Altamas Kabir, C.J.; R.K. Merathia, J

Bench : Division Bench

Advocate : Mokhtar Ahmad and D.K. Maltiyar, for the Appellant; S. Akhtar, SC-II, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal has been preferred against the judgment and order dated 25.6.2004 passed by the Principal Judge, Family Court, Jamshedpur in a proceeding u/s 125 of the Code of Criminal Procedure. The appeal has been put up by the department for hearing under Order XLI, Rule 11 of the CPC together with a note regarding its maintainability as an appeal.

2. Chapter V of the Family Courts Act, 1984 which contains Section 19 provides for appeals and revisions against the orders of the Family Court. Section 19(1) provides for appeal as a matter of right from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law. In our view, under the said provision, the question of hearing an appeal under Order XLI, Rule 11, CPC would not arise. On the other hand, Sub-section (4) of Section 19 makes special provision for revision either suo moto or otherwise by the High Court in respect of orders passed under Chapter IX of the Code of Criminal Procedure in which Section 125 is included.

3. It appears to have been the intention of the Legislature that against the orders passed u/s 125, Cr PC revision would lie and not an appeal as indicated in Section 19(1) of the aforesaid Act. In our view, Sub-section (4) of Section 19 is a special provision with regard to the orders passed under Chapter IX of the Code of Criminal Procedure.

4. In such circumstances, we agree with the department that this appeal is not maintainable and that it should have been filed as a revision. We, therefore, grant liberty to the appellant/applicant to convert the present appeal into a revision. The learned Advocate is given liberty to take such steps as may be necessary to convert -the same and the department is directed to take steps pursuant thereto.

Put up after all formalities are complete.