
(2020) 01 JH CK 0248
In the Jharkhand High Court
Case No : Criminal Revision No. 601 Of 2016

Nazim Akhtar

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 18-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125, 397, 401

Citation : (2020) 01 JH CK 0248

Hon'ble Judges : Shree Chandrashekhar, J

Bench : Single Bench

Advocate : Abhijeet Kumar Singh, Shadab Bin Haque, Sardhu Mahto

Final Decision : Disposed Of

Judgement

1. The petitioner has challenged the judgment dated 28.04.2016 passed in M. Case No.48 of 2012 by which he has been directed to pay Rs.4,000/- per month to his wife and Rs.3,000/- per month to his minor son as maintenance allowance for them.
2. Mr. Abhijeet Kumar Singh, the learned counsel for the petitioner has raised two grounds; (i) wife of the petitioner has solemnized her second marriage, and (ii) award of maintenance on the basis of the notification under the Minimum Wages Act which came into force in the year 2015 is erroneous.
3. In the proceeding under section 125 of the Code of Criminal Procedure the parties have led evidence, oral as well as documentary. The petitioner's wife has examined 5 witnesses and she has produced a copy of the bond executed between the parties, medical-certificate and tuition receipts indicating expenses for tuition of her son. To resist the claim of her maintenance, the petitioner has examined 3 witnesses and he has filed his wages-

slip.

4. On the basis of the materials laid before him, by an elaborate judgment, the learned Principal Judge, Family Court, Gumla has held thus;

24. Another point of contention in between the parties is the income of the Opposite Party. To prove the earnings of Opposite Party no

documentary evidence was brought on record on behalf of the applicant, except the oral evidences were it was asserted that the Opposite

Party works as Supervisor under two or more contractors of Tisco at Jamshedpur and earns Rs.20,000/- to 30,000/- per month from that. It

was also asserted by A.W.1, A.W.2, A.W.3, A.W.4 and A.W.5 that the Opposite Party also does a business of plying vehicles on hire with the

help of his father and from this business also he earns Rs.20,000/- to Rs.30,000/- per month. However, admitting the assertions of working

as a Supervisor, the Opposite Party (husband) has brought on record his wages slips Ext.A to Ex.A/21 which suggest that the Opposite

Party is working as a daily wages labour earning Rs.241.64 per day in the year 2014. It is admitted case of the Opposite Party that he

works as Supervisor under a contractor. The wages slips (Ext. A series) suggests that the Opposite Party works as a labour but the oral

evidences as brought on record on behalf of both the parties suggest him to be a Supervisor. A Supervisor is usually a skilled person who

has to Supervise (Superintend) the works of other persons and normally earns much more than a labourer. However in absence of any

concrete evidence on this point and to arrive at a finding, regarding earnings of a Supervisor, the daily wages fixed by Labour Department,

Government of Jharkhand vide Notification No.1551 dt.26.8.15 may be taken note of, and it suggests that a highly skilled labour engaged

in building construction work and engineering works earns Rs.10,450/-per month. Admittedly, the Opposite Party is a Supervisor who is

supervising the works of other labours and must be termed as highly skilled labour.

25. On the basis of the aforesaid the earning of the Opposite Party in this case must be about Rs.10450/- per month from his works as

Supervisor. Besides this, the evidences as led on behalf of the petitioner clearly established that the Opposite Party is also engaged in a

business of plying 2-3 vehicles on hire with the help of his father and by that business also he must be earning a minimum of about

Rs.10,000/- per month. In this way his total earnings per month comes to about Rs.10,450/- + Rs.10,000/- per month. Apparently the

Opposite Party is having a minimum gross income of Rs.20,450/- per month. The Opposite Party when examined before this court as O.P.W

No.2 admitted in para-32 in his cross-examination that he resides separately from his father and it is all along the case of the petitioner that

the Opposite Party resides separately from his family members. The petitioner has also brought on records Ext.2 and Ext.3 which are the

certificate issued by the School in which her son is studying and it shows the expenditure being borne by her on the education of her

child.â??

5. On award of maintenance on the basis of Notification under the Minimum Wages Act, it needs to be indicated that the petitioner has himself

produced documents which would indicate that in the year 2014 he was earning Rs.241.64 per day and it has come on record that he was working as

Supervisor under a contractor. By now it is well-settled that income of a person cannot be determined with exactitude in a proceeding under section

125 of the Code of Criminal Procedure. It is a summary proceeding and while adjudicating claim of a wife and/or minor child the object behind section

125 of the Code of Criminal Procedure has to be kept in mind. On technical grounds or a plea raised only for the sake of argument, an order granting

maintenance under section 125 of the Code of Criminal Procedure shall not be interfered by the High Court exercising jurisdiction under section 397

r/w section 401 of the Code of Criminal Procedure.

6. In the above facts, keeping in mind the object behind section 125 of the Code of Criminal Procedure and the limitations under the revisional

jurisdiction [refer, â??Sheonandan Paswan Vs. State of Bihar and Ors.â??, reported in (1987) 1 SCC 288,]I am not inclined to interfere in this matter

except to the extent that marriage of O.P No.2 is an admitted position and, therefore, the petitioner shall be liable to pay maintenance to her till

26.08.2017 only and, accordingly, Criminal Revision No.601 of 2016 is dismissed.

7. I.A Nos.7931 of 2017 and 9654 of 2017 stand disposed of.