
(2009) 04 PAT CK 0036
In the Patna High Court
Case No : Criminal Rev. No. 592 of 2005

Raj Kumar @ Raj Kumar Sah

APPELLANT

Vs

Smt. Baby Devi and Others

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(1)(c), 125(4)
Hindu Adoptions and Maintenance Act, 1956 — Section 20(3)

Citation : (2009) 3 PLJR 914

Hon'ble Judges : Samarendra Pratap Singh, J

Bench : Single Bench

Advocate : Anil Jaiswal and Anjana Bhagat, for the Appellant; Sanjay Kr. Ghosarvey for Opp. Party No. 2, for the Respondent

Judgement

Samarendra Pratap Singh, J.—Heard learned counsel for the petitioner and the opp. parties. The petitioner is aggrieved by order of Principal Judge, Family Court dated 6.8.2005, passed in Maintenance Case No. 85(M) of 2003 by which he has ordered for payment of maintenance of Rs. 1000/-per month each to all the opp. parties from the date of filing of their petition i.e. 26.8.2003 and also a sum of Rs. 5,000/-by way of cost of litigation.

2. The complainant alleged that the petitioner contracted another marriage in the year 1983. It is further alleged that soon thereafter both the petitioner and his second wife began to torture her and she alongwith two daughters were forced to leave the matrimonial house and had to fall back on her parents for living. It has been claimed by the complainant that opp. party (petitioner here) has a Kirana (grocery) shop and earns Rs. 30,000/- per month.

3. The petitioner who was Opp. Party appeared and filed show cause before the Family Court and denied the allegation. He also stated that the complainant No. 1 Smt. Baby Devi had signed a memo stating therein that on account of estranged relationship both parties are ready for divorce. In the memo she stated that she has two minor daughters aged about 5 years and 1 1/2 years.

Relying upon the aforesaid document, the petitioner claimed that she is living separately with mutual consent and thus is disentitled for maintenance under sub-section 4 of Section 125 of the Code of Criminal Procedure.

4. Section 125(4) of the Code of Criminal Procedure states that if a husband and wife live separately with mutual consent then in such case the wife becomes disentitled for maintenance. The Family Court after considering the materials on record as well as deposition of witnesses of both sides, directed the petitioner to pay maintenance of Rs. 1,000/-each to the wife and two daughters.

5. The petitioner has assailed the impugned order on the following grounds.

6. As opp. party No. 2 has agreed for mutual divorce she disentitles herself to maintenance u/s 125(4) of the Code of Criminal Procedure. Secondly, as the daughters have admittedly become major, they are non-entitled to maintenance u/s 125(1)(c) of the Cr.P.C. Furthermore, the Principal Judge, Family Court wrongly assessed the financial capability of the petitioner and erred in directing him to pay Rs. 3,000/- per month towards maintenance.

7. Learned counsel for opp. party Nos. 1, 2 and 3 states that Annexure-3 is forged and fabricated document as she never signed such paper, rather she left the matrimonial house alongwith her two daughters on account of torture meted out to her at the hands of her husband and his second wife. Furthermore the petitioner has a big grocery shop and earns about 40 thousand per month. In support of above contention learned counsel submits that the petitioner has so much money that he has purchased one house in the name of his second wife. Necessary document has already been on record.

8. In view of the conditions prescribed u/s 125(4) Cr.P.C. there cannot be any dispute to the proposition that if the wife lives separately with mutual consent, she incurs disability to get maintenance. However, in the instant case the position is different as the complainant has disputed the genuineness of Annexure-3. Moreover, neither the complainant nor any of her witnesses has stated that the former is living separately from her husband willingly or with mutual consent. In view of the aforesaid position, it is difficult to hold that opp. party No. 1 is living separately with mutual consent. Thus this Court is of the view that opp. party No. 1 does not suffer any disability u/s 125(4) Cr.P.C. disentitling claim of maintenance.

9. The next question is whether opp. party Nos. 2 and 3, daughters of opp party No. 1 are entitled to maintenance. Again it is not in dispute that they have become major. The issue whether an unmarried major daughter is entitled to maintenance has been settled by Apex Court, in case of Jagdish Jugtawat Vs. Manju Lata and Others, . The similar issue was also the subject of consideration before the learned Single Judge of this court in case of S.R. Chaudhary vs. State of Bihar and Others reported in 2004 (1) PLJR 838. The learned Single Judge relying upon the aforesaid judgment in. case of Jagdish Jugtawat (supra) held that even if an unmarried daughter becomes major, still she would be entitled to

maintenance in view of Section 125 Cr.P.C. read with Section 20(3) of the Hindu Adoption and Maintenance Act, 1956. The learned Judge further observed that the custom and precedents recognized the right of a major unmarried daughter to get maintenance. As such, this court holds that opp. party Nos. 2 and 3 would be entitled to maintenance, till they become capable of maintaining themselves or are married.

10. This takes us to the final issue, whether the maintenance of Rs. 3000/- granted to opp. parties is excessive or not.

11. The petitioner has submitted that his business has fallen and now he hardly earns a sum of Rs 2,300/- per month from his grocery shop. He further states that opp. party No. 2 is earning substantial income, as such, maintenance amount granted to opp. party is fit to be reduced.

12. It appears that the learned Principal Judge awarded maintenance of Rs. 1,000/- to each of the three opp. parties to be paid from the date of filing of the application i.e. from 26.8.2003. The maintenance amount calculated up to 31.3.2009, comes around Rs. 2,01,000/-. The petitioner up till now has only paid a sum of Rs 50,000/-.

13. This Court finds that nothing has been brought on record to disbelieve the evidence of complainant's side. More so, petitioner has himself admitted that he owns a grocery shop. Furthermore the petitioner has been financially well of to even purchase a house for 2nd wife. Taking into consideration all aspects of the matter, this Court while substantially upholding the order of Principal Judge makes a slight modification in the quantum of maintenance.

14. The petitioner would pay arrears of maintenance at the rate of Rs. 900/-per month to each of the opp. parties with effect from the date of filing of the application i.e. 26.8.2003 up to the date of passing of the order. This would be paid to opp. parties in equal monthly installments within six months from today. The petitioner, if so choses, may pay the arrears by way of bank draft in the name of opp. party No. 1 or deposit of cash in court below which the latter would be entitled to withdraw.

15. However the petitioner would be liable to pay maintenance at the rate of Rs 1,000/- per month to each of the opp. parties, as directed by the Principal Judge with effect from date of passing of this order. The aforesaid amount should be deposited by the 10th of subsequent months and could be withdrawn by opp. party No. 1 on behalf of herself as well as her two daughters. Learned Principal Judge, Family Court, Patna would ensure compliance of order of this Court. This application thus stands disposed of in aforesaid terms.