
(2012) 02 JH CK 0071
In the Jharkhand High Court
Case No : Criminal Rev. No. 655 of 2011

Raja Ram Mandal

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 15-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2012) 2 JCR 295 : (2012) 2 JLJR 386

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : R.C. Sahu, for the Appellant; S.S. Chaudhary, for the Opp. Party No. 2, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Prasad, J.

I.A No. 284 of 2012

1. An interlocutory application bearing No. 284 of 2012 has been filed wherein it has been stated that on 13.12.2011 an order has been passed for issuance of the notice upon the opposite party No. 2 in the limitation matter but that order seems to have been passed inadvertently, as the application had never been barred by limitation. In that view of the matter, the order dated 13.12.2011 is recalled by which notice was ordered to be issued upon the opposite party No. 2.

2. The aforesaid I.A stands disposed of.

3. Heard learned counsel appearing for the petitioner and learned counsel appearing for the opposite party No. 2.

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4. This application is directed against the order dated 17.8.2011 passed by Principal Judge, Family Court, Sahibganj in Maintenance Case No. 352 of 2009

whereby and whereunder learned Judge directed the petitioner to pay opposite party No. 2 a sum of Rs. 3000/- per month as allowance of maintenance.

5. Learned counsel appearing for the petitioner submits that while the matter was pending consideration, a compromise arrived at in between the petitioner and the opposite party No. 2 wherein it was agreed that a sum of Rs. 1600/- would be paid every month to the opposite party No. 2 by the petitioner but the Court below completely ignored this fact and fixed the amount of maintenance as Rs. 3000/- per month and that there has been no positive evidence regarding income of the petitioner to the extent of Rs. 8000/- to Rs. 10,000/- as determined by the Court and therefore, the Court committed illegality in determining the amount of maintenance as Rs. 3000/- per month.

6. As against this, learned counsel appearing for the opposite party No. 2 submits that opposite party had never agreed willingly to have Rs. 1600/- per month as allowance of maintenance, rather opposite party No. 2 was forced to sign on that paper and therefore, the Court did not accept that aspect of the matter and that positive evidence was adduced on behalf of the opposite party No. 2 showing the income of the petitioner as Rs. 8000/- to Rs. 10,000/- and that apart, the petitioner does have income from the agriculture but that has not been taken into account by the Court and therefore, under the circumstances, it can be said that the amount determined by the Court is just and proper.

7. Having heard learned counsel appearing for the parties and on perusal of the record. I do find that the opposite party No. 2 happens to be the legally wedded 1st wife but subsequently, as per the evidence adduced, the petitioner took another marriage and then opposite party No. 2 has driven out of the house. On account of that, an application was filed for maintenance u/s 125 of the Code of Criminal Procedure. During proceeding, witness was examined on the point of income and the Court having accepted the evidence of the witnesses determined the amount of the monthly income of the petitioner as Rs. 8000/- to Rs. 10,000/- .

8. In the circumstances, the amount of maintenance which was allowed in favour of the opposite party No. 2 to be paid by the petitioner never appears to be excessive. Under the circumstances, I do not find any illegality in the order passed by the learned Principal Judge, Family Court, Sahibganj. Accordingly, this application stands dismissed.