
(2003) 06 JH CK 0067

In the Jharkhand High Court

Case No : Criminal Revision No. 406 of 2001

Rajendra Prasad Paul @ Rajendra Pal

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 16-06-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(4), 125(5)
Family Courts Act, 1984 — Section 19(4)

Citation : (2004) 1 Crimes 116 : (2004) 1 DMC 344 : (2003) 3 JCR 223

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : Jaya Roy, for the Appellant; APP and H. Waris, for the O.P. No. 2, for the Respondent

Judgement

Hari Shankar Prasad, J.—This is an application u/s 19(4) of the Family Court's Act, 1984, for setting aside the order dated 19.7.2001 passed in Misc. Case No. 100/95.

2. The facts giving rise to the application are that O.P. No. 2 Meera Devi who is the wife of the petitioner filed a petition u/s 125, Cr PC, for payment of Rs. 1,000/- p.m. towards maintenance allowance for herself and her child and the case was registered as. Misc. Case No. 100/95. O.P. No. 2 stated in her petition u/s 125, Cr PC, that marriage was solemnized between the petitioner and herself on 19.2.1982 at Hazaribagh according to Hindu rites and customs and out of said wedlock, a son was born to them in February 1989. After sometime petitioner started torturing O.P. No. 2 physically and mentally and ultimately she was turned out from her matrimonial house with her child and since then, she is living with her mother and brother. It is also alleged in the petition that her husband is keeping a mistress with him at the place of his posting.. Respectable persons of the society made an attempt for settlement between them but that too failed. She claims that she is a housewife and she has no source of income and she prays for Rs. 1,000/-p.m. for maintenance of herself and her child.

Petitioner did not receive any notice in the aforesaid case but he was served with one Letter No. 489, dated 12.8.1987 at Kharkawan Canal Division, Rajnagar and from that letter, he came to know that in Misc. Case No. 100/95, Trial No. 373/97 filed by Mrs. Meera Devi, his wife- O.P. No. 2 has been allowed maintenance @ Rs. 1,000/- p.m. against the petitioner by the Court of Judicial Magistrate, 1st Class, Hazaribagh by order dated 18.1.1997. The petitioner came to Hazaribagh and after obtaining certified copy of the aforesaid ex-parte order dated 18.1.1997 filed an application on 14.8.1997 before the Court of Judicial Magistrate 1st Class, Hazaribagh u/s 125(4), 125(5) of the Code of Criminal Procedure and prayed for allowing him to adduce evidence in support of his contention and further prayed for staying the operation of the ex-parte order dated 18.1.1997 till final disposal of this application, the prayer was allowed and by order dated 14.8.1997 stayed distress warrant. The petitioner was directed to produce witness and on 28.11.1997, there was strike in the Court and the case was fixed for 6.1.1998, on that date the petitioner produced one witness, on that date he was examined and cross-examined and discharged and on 10.2.1998 the next date he was to appear for examination of other witnesses but due to election he could not appear on that date and petition to that effect was filed that petitioner is engaged on election duty and filed an application for time and on his application, time to the petitioner was granted but on condition that he has to deposit one third of the entire maintenance amount and fixed the case on 11.3.1998. The petitioner appeared on 11.3.1998 and both the sides were heard and 17.3.1998 was fixed for order. On 17.3.1998 a detailed order was passed directing the petitioner to deposit Rs. 15,875/- for maintenance of the child but no order for allowing maintenance in favour of the Opposite Party No. 2 was passed. The petitioner filed a criminal revision against the order dated 17.3.1998 which was dismissed by order dated 25.7.2000 by the 2nd Additional Sessions Judge in Criminal Revision No. 64/98. Against the aforesaid order the petitioner preferred a Criminal Misc. 7096/2000 (R) before the Hon'ble High Court, Ranchi but the petitioner had to withdraw that petition and the petition was dismissed as withdrawn vide order dated 14.3.2001 passed in Cr Misc. No. 7096/ 2000 (R). On 10.5.2001 the petitioner received a distress warrant dated 24.4.2001, whereby he was directed to deposit Rs. 68,000/- and he filed a petition on 18.5.2001, for recalling the petition but thereafter he did not receive any notice. Sometime after final order was passed from the Court of Principal Judge, Family Court at Hazaribagh, he prayed for certified copy and received the same.

3. Learned Counsel for the petitioner submits that stay was granted by learned Court of Judicial Magistrate vide order dated 17.2.1998, which was confirmed by the Hon'ble High Court also and the learned Family Court without hearing the matter of payment of maintenance on the application of O.P. No. 2 passed final order on 19.7.2000. Though the case was transferred to the Family Court but neither any information nor any notice even was sent to the petitioner, which is wholly arbitrary and against the principle of natural justice. Learned counsel further submitted that O.P. No. 2 is living in adultery and does not want to live

with the petitioner, therefore she is not entitled to any amount of maintenance u/s 125, Cr PC, and the learned Court below has failed to appreciate that the criminal revision 64/98 was against the order dated 17.3.1997 passed in Criminal Misc. No. 100/95. It is stated that the petitioner has not been given any notice to adduce evidence and for that revision petition should be allowed.

4. On the other hand, learned counsel for the O.P. No. 2 submitted that filial order has been passed in case and petitioner has adopted harassing attitude and is coming out with such attitude only to delay the disposal of the case.

5. The point which was urged before me by the learned counsel for the petitioner was that by order dated 19.1.97, learned Court below passed an order allowing maintenance in favour of the O.P. No. 2 and her child and distress warrant was issued for realization of the maintenance allowance and thereafter petitioner appeared and filed petition for staying operation of the distress warrant and for cancellation of order dated 19.1.97, whereupon learned Court below by order 14.8.97 stayed operation of the distress warrant and also operation of order passed on 19.1.97 and learned Court below, on petition filed on behalf of the petitioner, directed the petitioner to produce evidence on 11.3.98. A petition on behalf of the petitioner was filed for issuing summons and he deposited a cost of Rs. 200/-. Another petition was filed on behalf of the petitioner for staying the order of deposit of 1/3rd of the maintenance allowance granted as maintenance and after hearing both the sides, detailed order was passed on 17.3.98 in which petitioner was directed to produce evidence on his petition filed earlier. But at the same time, petitioner was directed to deposit a sum of Rs. 15,875/- towards maintenance of the child. But as against this order, petitioner filed a revision being Revision No. 64/98 which was disposed of on 25.7.2000 and this revision application was dismissed. Thereafter petitioner filed a criminal misc. in the High Court bearing Criminal Misc Case No. 7396/2000 and that was also dismissed. Thereafter on 19.7.2001 learned Court below passed an order directing the petitioner to deposit Rs. 72,000/- and in the alternative directed the superior authority to deduct Rs. 72,000/- from his G.P.F. account and deposit the same in the name of the O.P. No. 2 and her child. From the perusal of these papers it appears that on the one hand the petitioner admits that he was very anxious for education and welfare of his child and does not claim that the son is not born from him, but he has been filing case one after another and delaying payment of money for the education and welfare of the child so he adopted very bad practice by torturing O.P. No. 2 through another method by stopping payment of, maintenance allowance allowed to her son. But from perusal of the order dated 17.3.98 it appears that petitioner was asked to produce evidence in the Court and it does not appear from the impugned order dated 19.7.2001 whether any evidence or so was produced on behalf of the petitioner or not and in the circumstances this order suffers from defect that this order does not discuss what happened after 17.3.98 whether any witness was produced or not and whether order directing stay of payment of maintenance allowance to the wife of petitioner i.e., O.P. No. 2 till decision of the case Vacated or not and, therefore,

this Court takes serious view of the fact that the petitioner has been very callous in payment of maintenance allowance granted to the son born out of wedlock between the petitioner and the O.P. No. 2.

6. In that view of the matter, so far as grant of maintenance allowance to child is concerned, that order is perfect and does not require any interference. But so far as payment of maintenance allowance to the O.P. No. 2 is concerned, since the order is silent on that very point, hence that part of the order is set aside.

7. In the result, this revision application is partly allowed and the order directing authorities concerned to deduct Rs. 72,000/- from his G.P.F. account is modified to the extent of half i.e., Rs. 36,000/-with 9% interest thereon. The learned Court below is directed to take all coercive steps for the realization of the arrear amount till date and for payment of current maintenance allowance but in accordance with law.