
(2008) 06 JH CK 0045
In the Jharkhand High Court

Rajesh Ranjan Shrivastava	Vs	APPELLANT
State of Jharkhand and Others		RESPONDENT

Date of Decision : 11-06-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2008) 3 JCR 398

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—This Cr. Revision is directed against the order impugned passed by the ACJM, Koderma in M. Case No. 18 of 2001 on 30.7.2005 whereby and whereunder the petitioner was directed to pay a sum of Rs. 1500/- to O.P. No. 2 Pinki Sinha @ Nitu Kumari Sinha and Rs. 1.000/- to O.P. No. 3 Gudal Kumari Sinha per month each total to the tune of Rs. 2500/- as the maintenance in a proceeding u/s 125 CrPC.

2. The O.P. Nos. 2 and 3 initiated a proceeding u/s 125 CrPC for a sum of Rs. 10,000/- monthly maintenance on the ground that the petitioner refused to maintain them being his wife and daughter respectively. It was further stated that the petitioner was a graduate having earning of Rs. 10,000/- per month from tuition, Rs. 1 lakh per annum from cultivation and Rs. 2,000/- per month from house rent.

3. Learned ACJM, Koderma after examining the evidence adduced on behalf of the parties held that the O.P. No. 2 was the wife of the petitioner, legally married on 21.5.1994 and by consummation, O.P. No. 3 Gudal Kumari Sinha was born. By directing the petitioner to pay maintenance on the monthly basis to the O.P. Nos. 2 and 3 the learned ACJM further directed that the amount of maintenance must be paid positively by 10th of the succeeding calendar months by depositing it in the Court Nazareth and the arrears of the maintenance amount with effect

from 15.6.2001 was to be deposited in installments.

4. The petitioner assailed the order impugned on the ground that he was unemployed and had no income from tuition. Similarly, it was false to say that his annual income from cultivation was Rs. One lakh. On the other hand, in the causes shown he expressed that he was dependent upon his mother who was a school teacher. The petitioner relied upon an affidavit sworn by the O.P. No. 2 on 4.9.1995 admitting that the petitioner had no earning, as such she was not ready to live with him. The petitioner in the back drop of such declination filed a Matrimonial Suit for the dissolution of their marriage on the ground that the O.P. No. 2 had entangled with her brother-in-law Ashok Kumar. The petitioner further stated that the O.P. No. 2 after marriage remained for live days only with him and she voluntarily deserted him. Yet, the petitioner tried his level best so that his wife O.P. No. 2 could be brought to his house but when all efforts failed. Matrimonial Suit No. 9 of 2004 was filed for the dissolution of marriage, which was pending in the Court of District Judge, Giridih.

5. Learned Counsel for the petitioner further assailed the impugned order on the ground that no documentary evidence was adduced on behalf of the O.P. Nos. 2 and 3 in support of their assertion that the petitioner was earning Rs. 10,000/- from tuition, Rs. 1 lakh per annum from cultivation and Rs. 2,000/- per month from house rent and therefore, the impugned order is based upon conjectures and surmises without any basis for fixing the maintenance amount which was highly excessive, beyond the reach and capacity of the petitioner to pay.

6. On the other hand, by filing the counter-affidavit the O.P. Nos. 2 and 3 asserted that the petitioner expressed his willingness to pay monthly maintenance amount for a period of three months which could be evident from the order of the ACJM recorded on 26.9.2006 wherein it was consented to pay Rs. 1,56,560/- (One lakh fifty six thousand five hundred and sixty rupees) in two installments.

7. Having regard to the facts and circumstances of the case, I find from the impugned order dated 30.7.2005 that the O.P. Nos. 2 and 3 herein had produced and examined three witnesses in support of their claim for maintenance and the income of the petitioner but certainly without any documentary evidence that the petitioner had earning of Rs. 10,000/- per month from tuition. Rs. 1 lakh per annum from cultivation and Rs. 2,000/- per month from house rent. The Court observed that the O.Ps. No. 2 and 3 had no source of income and that O.P. No. 2 was living with her widow mother and her brother-in-law used to maintain the widow mother-in-law, sister-in-law besides his own family. On the other hand, petitioner had produced only two witnesses but he did not examine himself in the Court. The witness Gauri Tiwari produced on behalf of the petitioner admitted that the O.P. No. 2 was the wife of the petitioner whereas O.P. No. 3 was his daughter and that the petitioner had no earning of his own rather he was dependent upon his mother. The another witness was formal in nature though he was produced to prove the exhibit alleged to be sworn by the O.P. No. 2 on

4.9.1995 but since he failed to satisfy the Court as he could not prove the affidavit, it was not marked as exhibit so as to be taken in evidence.

9. There fore, there is no documentary evidence on the record in support of the assertion of the petitioner that the O.P. No. 2 had voluntarily deserted him and that he had no source of income to maintain her. It is further evident that the learned Court below is silent to show any basis for the calculation of the income of the petitioner as there was no finding as to what was the actual income of the petitioner before fixing the liability of maintenance on the monthly basis to the O.P. Nos. 2 and 3. To more clarify, no ground has been discussed for fixing the monthly maintenance of the O.P. Nos. 2 and 3, which is the issue based upon facts and therefore, the order impugned cannot sustain in law. Accordingly, the order passed by the ACJM, Koderma in M. Case No. 18 of 2001 on 30.7.2005 is set aside with the direction to the Court to pass an order afresh on the basis of the materials on the record and considering the income of the petitioner.

9. This petition is allowed with the above observation.

I.A. No. 2205/06, LA. No. 195/08 and I.A. No. 883/08.

These Interlocutory Applications stand disposed of in terms of the above order.