
(2007) 06 AHC CK 0034

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 8333 of 2007

Ram Ladaitey

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 25-06-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2008) 1 RCR(Criminal) 754

Hon'ble Judges : Vineet Saran, J

Final Decision : Dismissed

Judgement

Vineet Saran, J.—The petitioner is aggrieved by an order dated 1812006 passed by Chief Judicial Magistrate, Firozabad awarding maintenance of Rs. 1,000/ per month to be paid by the petitioner to his father Respondent No. 2 who had filed an application under Section 125 Cr.P.C. Besides the said amount, a sum of Rs. 250/ per month is to be paid by each of the other two sons, i.e. Respondents No. 3 and 4.

2. The brief facts are that the Respondent No. 2 Durjan Lal, who is father of the petitioner as well as Respondents No. 3 and 4, filed an application under Section 125 Cr.P.C. for grant of maintenance on the ground that the petitioner has an income of Rs. 15,000/ per month from the business of furniture and that the other two sons are also having substantial income. It was also stated that the applicant Respondent No. 2 Durjan Lal was 80 years of age and had sold his property and got his three sons settled from the proceeds of sale. Thereafter the three sons left their father unattended and thus the father (Respondent No. 2) was compelled to file a petition for grant of maintenance. The trial Court has recorded a categorical finding that despite notice, the sons did not contest the case and after holding that the sons had substantial income, the petitioner was directed to pay maintenance allowance of Rs. 1,000/ per month and the Respondent Nos. 3 and 4, who had lesser income, were directed to pay a sum of Rs. 250/ each as maintenance allowance to their father. After the passing of the

impugned order dated 1812006, the petitioner filed an application for recalling the said order, which was dismissed in default on 18102006 (copy of which has not been filed with the petition). The petitioner then filed an application for recalling the order dated 18102006 stating that he could not appear on the date fixed because he had gone to his inlaw's place, as his brotherinlaw had expired. The said application was contested by the Respondent No. 2 and a finding of fact has been recorded to the effect that the petitioner does not have any brotherinlaw and as such the question of his going to his inlaw's place because of the death of his brotherinlaw, does not arise. In the writ petition nothing has been placed before me to show that the findings of fact recorded by the Court below are incorrect.

3. I have heard learned Counsel for the petitioner as well as learned A.G.A. appearing for the Staterespondents and have perused the record.

4. This is an unusual case where the son, instead of accepting his responsibility of maintaining his father, is contesting the case against him. The sons have a pious duty to maintain their aged father specially when the father had sold his properties and given the proceeds to the sons for establishing their business and other purposes. It is very unfortunate that the son, instead of maintaining his father, is contesting the case tooth and nail and is not prepared to pay maintenance allowance and has instead filed this writ petition, thereby dragging his father into litigation upto the highest Court in the State. In the present case, the amount of maintenance awarded by the Court below cannot be said to be in any way excessive. Learned Counsel for the petitioner does not dispute the finding that the petitioner does not have a brotherinlaw because of which he had gone to his in law's place, as had been stated in the affidavit filed in support of the application for recall of the order dated 18102006. The only reason given for filing such a false affidavit is that the same was prepared by the local counsel, which had been signed by the petitioner without understanding its contents. Thus it is a clear case where the petitioner admits that he has filed a false affidavit, meaning thereby that he was prepared to do anything to see that his father is not given any maintenance.

5. In the aforesaid circumstances I do not find any illegality with the impugned orders and as such no interference is called for in this writ petition. This writ petition is thus liable to be dismissed. Considering the attitude of the petitioner towards his father and also the fact that even though the order for payment of maintenance had been passed on 1812006 (which was nearly one and half years back), instead of paying the said amount, the petitioner has been dragging his father into further litigation and has gone to the extent of filing false affidavit, in my view, the petition should not only be dismissed but the petitioner should be saddled with cost, which is assessed, at Rs. 5,000.

6. Accordingly, this writ petition is dismissed with cost of Rs. 5,000. The cost of Rs. 5,000 shall be deposited with the trial Court within one month from today failing which, on an application made by the Respondent No. 2, the trial Court

shall pass necessary orders directing the Collector, Firozabad to recover the said amount from the petitioner as arrears of land revenue. On such cost being deposited or realized, the same shall be paid to the Respondent No. 2 forthwith.