
(1998) 04 OHC CK 0007

In the Orissa High Court

Case No : Criminal Miscellaneous 692 of 1997 & Criminal Miscellaneous No. 692 of 1997

Ramesh Ch. Ojha

APPELLANT

Vs

Rangalata Ojha and Another

RESPONDENT

Date of Decision : 20-04-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2000) 1 DMC 588 : (1999) 2 RCR(Criminal) 791

Hon'ble Judges : P.R. Tripathy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.R. Tripathy, J.—Heard.

This revision is directed against the judgment dated 7.2.1997 in Criminal Proceeding No. 411 of 1991, a proceeding u/s 125 of the Code of Criminal Procedure, 1973 (in short "the Code") registered on the joint application of both the opposite party members. By that order monthly maintenance at the rate of Rs. 350/- and Rs. 250/- was granted to opposite party Nos. 1 and 2 respectively with effect from the date of application i.e. 1.8.1990.

2. Inter se relationship of the parties that petitioner is the husband of the opposite party No. 1, and father of opposite party No. 2, and that opposite party No. 2 is a minor, are undisputed facts. They also alleged that having sufficient income, petitioner refused and neglected to maintain them, and that they have no source of income to sustain the livelihood. Petitioner disputed the allegations and contested the case. Learned Judge, Family Court, on assessment of evidence in record found the case of ill-treatment and cruelty to have been substantiated by the opposite parties and that opposite party members are destitutes. In this revision, at the stage of argument such findings are not challenged. Learned Judge, Family Court, recorded further finding that petitioner has a black smith firm (shop) and he has good income from out of the same and accordingly

ordered for payment of monthly maintenance at the above quoted rate.

3. Learned Counsel for the petitioner vehemently argues that without recording a specific finding about the quantum of income of the petitioner, learned Judge, Family Court should not have fixed the rate of monthly maintenance. Learned Counsel for the opposite parties, on the other hand, argues that an income of over Rs. 1,500/- per month of the petitioner being an admitted fact in record, grant of the aforesaid monthly maintenance to the opposite party members cannot be regarded as excessive or disproportionate to the income of the petitioner.

4. According to provision of law in Section 125(1) of the Code, maintenance can be ordered against a person having sufficient means, if the other requirements are proved. It is the settled position of law that sufficient means does not only mean the visible means of income, but also the capacity to earn. Petitioner has not stated that he has no source of income or that he has no capacity to earn. On the other hand, he has deposed that he is a daily wage earner at the rate of Rs. 25/- per day. It also appears from the impugned judgment that petitioner's father appearing as D.W. No. 2 admitted that petitioner has a blacksmith firm (shop) and he has good income out of the same. It thus appears that petitioner did not volunteer about that source of income.

5. In a case of this nature, it being not a game of tricks that petitioner should resort to touch sorts of technicalities, Learned Judge, Family Court, having taken into consideration the aforesaid facts and evidence, fixed the quantum of monthly maintenance after being satisfied about the source of income of the petitioner. Hence, the impugned order of maintenance is not liable to be set aside only because of non-recording a specific finding about the monthly annual income of the petitioner. However, it is observed that justice must not only be done, but it should appear to have been done. In that sense, if the Trial Court would have recorded a specific finding regarding the quantum of income, then the impugned order of maintenance would have been a better speaking order, conveying the manner in which the Court has satisfied the sufficiency of means with the petitioner and the reason why the impugned quantum of maintenance was granted in favour of the opposite party members. Be that as it may, for the reasons indicated, there is nothing to interfere with the impugned judgment by exercising revisional jurisdiction. Accordingly, the revision is dismissed.

6. At the initial stage of argument, it was urged on behalf of the petitioner that he has preferred two civil appeals; one against the order of dismissal of his petition for restitution of conjugal right and the other against rejection of his petition seeking guardianship and custody of the opposite party No. 2, and order be passed analogous hearing of those appeals alongwith this revision. The aforesaid prayer was rejected on the ground of lack of relevancy in both sets of proceedings.