
(2006) 04 PAT CK 0036

In the Patna High Court

Case No : Criminal Miscellaneous No. 7664 of 2002

Ramesh Chandra Pandey @ Phoolan

APPELLANT

Vs

The State of Bihar and Smt. Asha Devi

RESPONDENT

Date of Decision : 27-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 482
Penal Code, 1860 (IPC) — Section 494, 498A

Citation : (2006) 3 PLJR 135

Hon'ble Judges : Rekha Kumari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rekha Kumari, J.—This is an application filed u/s 482 of the Code of Criminal Procedure (hereinafter referred to as the Code) for quashing the order dated 6.2.2002 passed by the 6th Additional Sessions Judge, Aurangabad in Criminal Revision No. 100 of 2001/1 of 2002 by which he has affirmed the order dated 2.5.2001 passed by Sri Ram Pratap Asthana, J.M. 1st Class, Aurangabad in Maintenance Case No. 30 of 1995 Tr. No. 964 of 2001 allowing monthly maintenance of Rs. 500/- to Smt. Asha Devi, Opposite Party No. 2, u/s 125 of the Code.

2. Heard learned Counsel for the petitioner and learned Counsel for Opposite Party No. 2 and the State.

3. It appears that Opposite Party No. 2 Smt. Asha Devi had filed a case against the petitioner for grant of maintenance u/s 125 of the Code alleging therein that she is the legally wedded wife of the petitioner. The petitioner contracted a second marriage and started torturing her and thereafter drove her out from his house. Opposite Party No. 2, hence, started living with her father but she has no source of income. Her father is also unable to maintain her, whereas the petitioner has sufficient means to maintain her.

4. The petitioner opposed the prayer of Opposite Party No. 2 by filing a show cause stating, inter alia, that Opposite Party No. 2 has willingly left his house. She has sufficient means to maintain herself whereas he is an un-employed graduate having only five bighas of land.

5. Both sides than examined witnesses in support of their case. The learned Magistrate, in seisin of the case, allowed the prayer of Opposite Party No. 2 and by order dated 19.6.1999 had first directed the petitioner to pay a sum of Rs. 300/- per month as maintenance. The petitioner then filed a revision application against that order. In revision the said order was set aside and the case was remanded back to take further evidence on the point of income of both sides. Both sides then led further evidence in this regard.

6. It further appears that Opposite Party No. 2 had also filed a complaint case bearing No. 179 of 1996 under Sections 494 and 498A of the Indian Penal Code against the petitioner and before passing of the order by the learned Magistrate, there was a compromise between the parties and Opposite Party No. 2 received two Bank drafts of Rs. 49,500/- each and Rs. 15,000/- in cash, total amounting to Rs. 1,14,000/- and withdrew the complaint case but did not withdraw the maintenance case.

7. The learned Magistrate then considering the evidence and hearing the parties held that the petitioner had sufficient means to maintain Opposite party No. 2 whereas there is no evidence that the wife had sufficient means to maintain herself. It was also submitted before him on behalf of the petitioner that the report of the Branch Manager of State Bank of India (Ext. C) shows that a sum of Rs. 1,14,000/- received by the wife Opposite Party No. 2, if deposited in Bank would fetch an interest of Rs. 1006.25 P per month. It was also submitted before him that as a lump sum amount has been paid in lieu of maintenance, Opposite Party No. 2 is not entitled to any monthly maintenance. The learned Magistrate, however, held that the above amount was paid to compromise the case and not in lieu of maintenance and the petitioner was duty bound to pay monthly maintenance. Accordingly, by order dated 2.5.2001 he directed the petitioner-husband to pay Rs. 500/- per month to Opposite Party No. 2 with effect from the date of the filing of the petition i.e. 4.11.1995.

8. The petitioner preferred a revision application against the above order which was dismissed by the learned 6th Additional Sessions Judge, Aurangabad by the impugned order.

9. Learned Counsel for the petitioner submitted that admittedly Opposite Party No. 2 had received Rs. 1,14,000/- and if a sum of Rs. 1,15,000/- is deposited in Bank for three years, it fetches an interest of Rs. 1006 .25 P per month (Annexure-3) which is double the monthly maintenance allowed. Therefore, Opposite Party No. 2 is not entitled to any further amount by way of maintenance. He further contended that as there was a compromise between the parties and a lump sum amount was given in lieu of maintenance, Opposite Party

No. 2 was not entitled to any further maintenance.

10. Learned Counsel for Opposite Party No. 2 defended the impugned order and submitted that right to claim maintenance from her husband by the wife is a statutory right and this right cannot be annihilated by any agreement between the parties. In support of his submission, he has relied on the decision of this Court in the case of Rajesh Kochar Vs. Reeta Kumari .

11. It is well settled that right to claim maintenance u/s 125 of the Code is a statutory rights and whenever it is proved to the satisfaction of the court that there is refusal or neglect on the part of the husband having sufficient means to maintain his wife, unable to maintain herself, the husband is bound to provide maintenance.

12. In this case also it is admitted that Opposite Party No. 2 is the legally wedded wife of the petitioner. It is not denied that the petitioner has contracted a second marriage. Therefore, Opposite Party No. 2 has a valid reason to live separately from the petitioner. It is also admitted that Opposite Party No. 2 is living separate from the petitioner in her father's house and no maintenance is being paid to her by the petitioner. The order of the learned Magistrate is clear that the petitioner is able to maintain Opposite Party No. 2 and Opposite Party No. 2 is unable to maintain herself. Therefore, all the ingredients of Section 125 of the Code are satisfied in this case. So, the courts below were justified in holding that Opposite Party No. 2 was entitled to maintenance from the petitioner.

13. It is, however, made clear that during the pendency of the proceeding, Opposite Party No. 2 had received on 24.3.1999 a total sum of Rs. 1,14,000/- from the petitioner for compromising the case u/s 494 of the Indian Penal Code filed by her and this maintenance case. The submission of the learned Counsel, as already mentioned, is that if the amount would have been deposited in a Bank, that could fetch Rs. 1006.25 P per month as interest and that amount was more than the maintenance amount of Rs. 500/- allowed to her u/s 125 of the Code as maintenance and, therefore, Opposite Party No. 2 was not entitled to receive any further amount as monthly maintenance. But there is nothing to show that the said amount or any part thereof was deposited in any Bank. The evidence on record, on the other hand, shows that prior to the receiving of the amount, Opposite Party No. 2 had taken loan of Rs. 20,000/- on 6.4.1994 and Rs. 35,000/- on 3.1.1998 to meet her expences. Learned Counsel for Opposite Party No. 2 has also rightly pointed out that besides the above loan, there must have been expences towards cost of litigation and day to day personal expences of the Opposite Party No. 2 till passing of the impugned order.

14. It is, therefore, evident that if any amount was left with Opposite Party No. 2, it would be meagre and the interest therefore, was not sufficient for maintenance of Opposite Party No. 2 to disentitle her from claiming maintenance.

15. As regards the second submission of the learned Counsel, the learned Magistrate has held that the above amount was paid to Opposite Party No. 2 for

just compromising the case and not in lieu of maintenance. Annexure-1 filed with this application also shows that it is mentioned therein that Opposite Party No. 2 had compromised the complaint case and the case had been dropped and as all the disputes between them were over and she was living with her husband, she did not want to proceed with the maintenance case. Annexure-2 of the application shows that Opposite Party No. 2 had received the amount for compromising the two cases. So, I find that the learned Magistrate was justified in holding that the above lump sum money was not paid to Opposite Party No. 2 by the petitioner as a substitute towards adjustment of monthly maintenance, which is also very evident from the fact that according to Annexure-1 Opposite Party No. 2 was living with her husband. Learned Counsel for the petitioner has not shown any document to prove that Opposite Party No. 2 voluntarily surrendered her right of maintenance.

16. Therefore, only because Opposite Party No. 2 had received a lump sum amount of Rs. 1,14,000/-that cannot be a ground to deprive Opposite Party No. 2 to claim maintenance u/s 125 of the Code.

17. I, therefore, do not find any sufficient ground to interfere with the impugned order. Accordingly, this application is dismissed.