
(2020) 06 JH CK 0062

In the Jharkhand High Court

Case No : Criminal Revision No. 713 Of 2016

Rana Pratap Singh

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 29-06-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125
Constitution Of India, 1950 — Article 15(3), 39

Citation : (2020) 06 JH CK 0062

Hon'ble Judges : Shree Chandrashekhar, J

Bench : Single Bench

Advocate : Lukesh Kumar, Vandana Bharti

Final Decision : Dismissed

Judgement

1. The petitioner is aggrieved of the order dated 26.08.2014 passed in Maintenance Petition No. 359 of 2011 by which he has been directed to pay Rs. 2000/- per month to the applicant (hereinafter referred to as the respondent) and Rs. 1000/- each for his two minor children. The learned Principal Judge, Family Court, Dhanbad has allowed the maintenance petition under section 125 of the Code of Criminal Procedure from the date of order.

2. Mr. Lukesh Kumar, the learned counsel for the petitioner submits that award of maintenance to the respondent and her two children which cumulatively comes to Rs. 4000/- per month is improper particularly in view of a finding recorded by the learned Principal Judge, Family Court, Dhanbad that no definite proof of income of the husband has been brought on record.

3. In the proceeding under section 125 of the Code of Criminal Procedure the applicant-wife, who is the respondent herein, has examined herself as a witness and stated that her husband is getting salary of Rs. 10,000/- per month, in addition to agricultural income and house rent. She has further stated that she is unable to maintain herself and her two minor children, she has been driven out

from her matrimonial home and her husband has been harassing her in connection to demand of dowry. However, the petitioner has not led any oral evidence; he has not even examined himself as a witness. In the written note of arguments he has claimed that the applicant is his second wife and while so, there is a remote possibility of his demanding dowry from her.

4. The proceeding under section 125 of the Code of Criminal Procedure is summary in nature and in such a proceeding strict compliance of the rules of evidence is generally not insisted upon by the Courts. In "Captain Ramesh Chander Kaushal Vs. Mrs. Veena Kaushal and Others" reported in (1978) 4 SCC 70, the Hon'ble Supreme Court has observed :

"9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfil. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advance the cause -- the cause of the derelicts."

5. In the present case the petitioner has admitted that the applicant is his second wife and from the wedlock two children were born. The learned counsel for the petitioner submits that from the first marriage the petitioner has three children who are also minor. The learned Principal Judge, Family Court, Dhanbad has found that the parties are at logger's head and there are criminal cases pending against them. The respondent-wife has alleged that her husband has been harassing her in connection to demand of dowry and finally he has ousted her from her marital home. In my opinion on such facts it can be safely held that the respondent-wife has just excuse for not staying in the company of her husband. On income of the petitioner and quantum of maintenance what has been observed by the Hon'ble Supreme Court in "Shamima Farooqui Vs. Shahid Khan" reported in (2015) 5 SCC 705, that the quantum of maintenance should be adequate so as to enable a wife to live with dignity, has to be kept in mind. The learned Principal Judge, Family Court, Dhanbad has observed that no definite proof of income of the husband has been brought on record which in my opinion is not unusual, for it is almost impossible for a wife to secure documentary evidence regarding income of her husband, however, during course of the hearing the learned counsel for the petitioner has submitted that salary of the petitioner is about Rs.8400/- per month. Keeping this in mind and the fact that the petitioner has income from agriculture and house rent, in my opinion, award of maintenance of Rs.2000/- for the wife and Rs. 1000/- each for two minor children is not excessive rather just and proper.

6. In view of the aforesaid facts, finding no merit in this criminal revision petition, Criminal Revision No. 713 of 2016 is dismissed.

7. I.A No. 4001 of 2016 stands disposed of.