
(2019) 10 JH CK 0004

In the Jharkhand High Court

Case No : Criminal Revision No. 559 Of 2018

Sanjay Gorai @ Bhote Gorai

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 14-10-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 125, 125(4), 125(5), 127, 127(3)
Indian Penal Code, 1860 — Section 406, 494, 498A

Citation : (2019) 10 JH CK 0004

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : A.K. Kashyap, Antariksh Srivastava, J.N. Upadhyay

Judgement

1. Heard Mr. A.K. Kashyap, learned senior counsel appearing on behalf of the petitioner along with Mr. Antriksh Srivastava, Advocate.
2. Heard Mr. J. N. Upadhyay, learned counsel appearing on behalf of opposite party No. 2.
3. Nobody appears on behalf of the State.
4. Instant revision application has been filed challenging the order dated 06.03.2018 passed in Misc. Case No. 31 of 2013 by the learned Principal Judge, Family Court, East Singhbhum at Jamshedpur, whereby the prayer made by the petitioner under Section 127 of the Code of Criminal Procedure, 1973 for cancellation of order of maintenance allowed vide order dated 17.03.2010 passed in Misc. Case No. 60 of 2002 by the learned Principal Judge, Family Court at Jamshedpur has been dismissed.
5. From the records of this case, it appears that opposite party No. 2 has filed Maintenance Case No. 60 of 2002 under Section 125 of the Code of Criminal Procedure. The said Maintenance Case was allowed vide order dated 17.03.2010 and the opposite party No. 2 was ordered to get maintenance from the present petitioner @ Rs. 1000/- per month. In the order dated 17.03.2010 passed in

Misc. Case No. 60 of 2002, the learned court below recorded a finding on the basis of oral and documentary evidences adduced by the parties that the present opposite party no. 2 is legally married wife of the present petitioner and out of wedlock two daughters were born. The order dated 17.03.2010 passed in Maintenance Case No. 60 of 2002 was challenged by the present petitioner before this Court in Cr. Revision No. 431 of 2010 which was dismissed vide order dated 01.03.2012.

6. It further appears from the records of this case that present opposite party No. 2 had filed a criminal case against the present petitioner and his family members for the alleged offence under Section 498-A/494/406 of the Indian Penal Code which was numbered as Complaint Case C/1 No. 133 of 2000. In the said complaint case, the other accused persons except the petitioner and his mother were acquitted by the learned Court of Judicial Magistrate, 1st Class, Jamshedpur and the petitioner and his mother were convicted u/s 498-A/494 of the IPC. Against the order of conviction in Complaint Case C/1 No. 133 of 2000, present petitioner and his mother filed Criminal Appeal No. 220 of 2007 in which the present petitioner as well as his mother were acquitted vide judgement dated 03.10.2012 on the ground that the factum of marriage between the present petitioner and opposite party No. 2 could not be proved by the present opposite party No. 2 in the said Complaint Case C/1 No. 133 of 2000.

7. In this background, the present petitioner filed Misc. Case No. 31 of 2013 before the learned Principal Judge, Family Court at Jamshedpur for cancellation of order dated 17.03.2010 passed in Misc. Case No. 60 of 2002 and raised following grounds for cancellation: -

(a) In the judgment passed in Cr. Appeal No. 220 of 2007, it was observed by the Sessions Court that the present opposite party No. 2 was neither the wife of the present petitioner nor she had delivered any child through the present petitioner, as such the opposite party No. 2 is not entitled to get any maintenance from the present petitioner.

(b) The present opposite party No. 2 has again married with one Prem Bahadur, S/o Ram Bahadur, R/o Ghorabandha, P.S. Govindpur and she along with her children were living peacefully with said Prem Bahadur, as such she is not entitled to get any maintenance from the present petitioner.

8. Counsel for the petitioner submits that the learned court below while dismissing the Misc. Case No. 31 of 2013 by the impugned order has rejected the case of the petitioner mainly on the ground that the present petitioner had challenged the order dated 17.03.2010 passed in Misc. Case No. 60 of 2002 in Cr. Revision No. 431 of 2010 which was dismissed by this Court vide order dated 01.03.2012 after recording a finding that the present petitioner is the husband of the opposite party No. 2 and father of the two daughters. Learned court below further observed while dismissing the Misc. Case No. 31 of 2013 that the judgement dated 03.10.2012 passed in Cr. Appeal No. 220 of 2007, whereby the

present petitioner has been acquitted, was challenged by the present opposite party No. 2 in Cr. Misc. Petition No. 567 of 2013 before this Court and the same was still pending.

9. He submits that so far as the grounds raised by the petitioner regarding marriage of the present opposite party No. 2 with one Prem Bahadur who was said to be living with Prem Bahadur along with her children has not been considered by the learned court below. He further submits that even if it is assumed that the petitioner and the opposite party No. 2 were legally married as decided in Misc Case No. 60/2002, then the fact that the opposite party No. 2 was living with said Prem Bahadur would amount to adultery and this subsequent development was required to be considered by the learned court below while deciding the case . The learned senior counsel specifically referred to the provisions of Section 125(4) and 125(5) of the Code of Criminal Procedure to submit that if the wife is living in adultery, then she is not entitled to maintenance and the order granting maintenance is liable to be cancelled. The learned counsel for the petitioner submits that evidence was also led to that effect regarding marriage of opposite party No. 2 with said Prem Bahadur, but the impugned order does not record any finding on the aforesaid aspects of the matter and accordingly, the impugned order is perverse. Counsel for the petitioner submits that one line finding has been recorded in Para-17 of the impugned order on this aspect of the matter by simply stating that the present petitioner has not been able to prove any of the circumstance as provided u/S 127(3) of the Cr. P.C. for cancellation of maintenance allowed vide order dated 17.03.2010 passed in Misc. Case No. 60 of 2002. The learned counsel has relied upon the judgment passed by the Hon'ble Supreme Court reported in 1979 Cri. Law Journal 198 (Bhupinder Singh vs. Daljit kaur) to submit that it has been held by the Hon'ble Supreme Court that if the husband has a case u/S 125(4), 125(5) and 127 of the Code of Criminal Procedure, it is open to him to initiate appropriate proceeding. The learned counsel for the petitioner further submits that as the impugned order is totally non-speaking on this aspect of the matter, therefore, the same is fit to be set-aside and the matter be remanded back to the learned court below for fresh consideration and for passing a reasoned order.

10. Counsel appearing on behalf of the opposite party No. 2, on the other hand, submits that the impugned order has been rightly passed and merely because opposite party No. 2 could not prove the factum of marriage with the petitioner in the criminal case filed by her for alleged offence under Sections 498-A, 494, 406 of the Indian Penal Code in Complaint Case C/1 No. 133 of 2000, the same by itself cannot be a ground to set-aside the order granting maintenance . The order granting maintenance was passed by the learned court below vide order dated 17.03.2010 in Misc. Case No. 60 of 2002, after recording a specific finding on the basis of materials on record that the present petitioner is the legally married husband of the present opposite party No. 2. He submits that the said finding was also confirmed by the High Court in Cr. Revision No. 431 of 2010 and accordingly merely because the present opposite party No. 2 did not lead cogent

evidence in Complaint Case C/1 No. 133 of 2000 to prove the factum of marriage with the present petitioner, which ultimately led to his acquittal by the appellate court, the said judgment has no bearing on the finding recorded by the learned court below regarding marriage in the proceeding under Section 125 of the Code of Criminal Procedure which was affirmed by this Court in Cr. Revision No. 431 of 2010. He reiterates that Criminal case under Sections 498-A/494/406 of the Indian Penal Code has no bearing in the instant proceedings. The learned counsel submits that in the aforesaid background no case was made out by the present petitioner for cancellation of order of maintenance dated 17.03.2010 passed in Misc. Case No. 60 of 2002. Accordingly, he submits that the impugned order does not call for any interference.

11. After hearing counsel for the parties and after considering the materials available on record this court finds that admittedly the opposite party no. 2 has filed Maintenance Case No. 60 of 2002 under Section 125 of the Cr. P.C. which was allowed in her favour vide order dated 17.03.2010 fixing the maintenance @ Rs. 1,000/- per month. In the order dated 17.03.2010 a clear finding was recorded that the present petitioner is the husband of the present opposite party No. 2 and is father of her two children. The said order dated 17.03.2010 passed in Misc. Case No. 60 of 2002 was challenged by the present petitioner in Cr. Revision No. 431 of 2010 and this Court also by a reasoned order upheld the said finding vide order dated 01.03.2012.

12. A complaint case being C/1 Case No. 133 of 2010 was also filed by the opposite party no. 2 against the present petitioner and his family members under Sections 498-A/494/406 in which the petitioner and his mother were convicted. The order of conviction was challenged in Cr. Appeal No. 220 of 2007 which was allowed on the ground that the present opposite party No. 2 could not prove the factum of marriage as photocopy of certain documents produced by her as evidence in the Criminal Case were not admissible in evidence.

13. This court is of the considered view that merely because the factum of marriage could not be proved by the present opposite party No. 2 in the aforesaid Criminal Case being Complaint Case C/1 No. 133 of 2000, the same has no bearing on the specific finding of marriage recorded by the learned court below in the proceeding under Section 125 of the Cr. P.C. which was also upheld by this court in Cr. Revision No. 431 of 2010 disposed of on 01.03.2012 by a reasoned order and accordingly this court is of the considered view that the learned court below has rightly refused to consider the findings of judgment of acquittal in the criminal case under section 498A/494 of Indian Penal Code.

14. However, this court finds that apart from the aforesaid point regarding acquittal of the petitioner in the criminal case filed by the opposite party no. 2 under section 498A/494 of Indian Penal Code, the petitioner had also raised another point that the present opposite party No. 2 had performed marriage with one Prem Bahadur and she was living with him along with her two daughters. This point was certainly relating to the circumstance which was required to be

considered on the basis of evidences led by the parties while passing the impugned order. This court finds that in the impugned order the learned court below while rejecting the prayer for cancellation of order of maintenance dated 17.03.2010 passed in Misc. Case No. 60 of 2002 has not recorded any finding on the aforesaid aspect of the matter and has simply mentioned in paragraph no. 17 of the impugned order that the petitioner has not been able to prove any of the circumstance as provided under Section 127(3) of the Cr. P.C. for cancellation of maintenance allowed vide order dated 17.03.2010 passed in Misc. Case No. 60 of 2002. This court finds that rejection of the aforesaid plea of the petitioner by the learned court below is non speaking on the so called changed circumstances as claimed by the petitioner and hence fit to be set-aside to the extent it relates to the said point.

15. Accordingly, this court hereby remands of the matter back to the learned court below only for the purposes of passing a reasoned order on the plea raised by the petitioner regarding so-called marriage of opposite party No. 2 with one Prem Bahadur and her alleged living with him along with her two daughters on the basis of evidence which are already on record.

16. So far as the point regarding the factum of marriage is concerned, this court finds that in criminal Case being Complaint Case C/1 No. 133 of 2000, the petitioner was acquitted by the appellate court on the basis of the finding recorded therein that the present opposite party No. 2 was not able to prove the factum of marriage. This court is of the considered view that the said criminal case has no bearing in the present proceedings particularly in view of the fact that while passing the order of maintenance under Section 125 of the Code of Criminal Procedure, the learned court below had clearly recorded a finding regarding factum of marriage between the present petitioner and the opposite party No. 2 and also children born out of the said marriage on the basis of evidences led by the parties and the said finding was also confirmed by this court in Cr. Revision No. 431 of 2010 vide order dated 01.03.2012. This court is of the considered view that the finding regarding factum of marriage so far as it relates to claim of maintenance under section 125 of code of criminal procedure is binding on the parties and the finding in the judgement of acquittal in appeal arising out of Complaint Case C/1 No. 133 of 2000 has no bearing in the matter of cancellation of the order of maintenance.

17. The present petition is hereby disposed of with a direction to the learned court below to consider the limited point which had been indicated above on the basis of materials available on record by a reasoned order within a period of one month from the date of appearance of the parties.

18. It is made clear that this court has not gone into the merits of rival claims in connection with so called marriage of opposite party No. 2 with one Prem Bahadur and the matter is being remanded back to the learned court below only on account of the fact that the impugned order is non speaking on this aspect of the matter and hence perverse.

19. It has been held by the Hon'ble Supreme Court in the judgment reported in 1979 Criminal Law Journal 198 (Bhupinder Singh vs. Daljit kaur) that if the husband has a case under Sections 125(4), (5) or Section 127 of the Code of Criminal Procedure it is open to him to initiate appropriate proceedings and until the original order for maintenance is modified or cancelled by the higher court or is varied or vacated in terms of Section 125(4), 125(5) or Section 127 its validity survives. In the aforesaid view of the matter this court is of the considered view that the present opposite party No. 2 will continue to be entitled to maintenance which has been granted to her vide order dated 17.03.2010 passed in Misc Case no. 60 of 2002 so long as it survives.

20. The parties are hereby directed to appear before the learned court below on 18.11.2019.

21. Pending I.A, if any, stands dismissed as not pressed.

22. Interim order, if any, stands vacated.

23. Let this order be communicated to the learned court below through FAX.