
(2006) 12 JH CK 0027
In the Jharkhand High Court

Saranan Banerjee and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 125
Family Courts Act, 1984 — Section 19
Hindu Marriage Act, 1955 — Section 9
Penal Code, 1860 (IPC) — Section 498A

Citation : (2007) 2 DMC 608

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Judgement

D.K. Sinha, J.—The husband-petitioner Saranan Banerjee preferred this application u/s 19(4) of the Family Courts Act, 1984 against the judgment passed by the Principal Judge, Family Court, Jamshedpur on 28.6.2002 in Misc. Case No 99 of 1998/70 of 2001 whereby and whereunder the petitioner-husband was directed to pay a sum of Rs. 1,500 as monthly maintenance to the opposite party No. 2 wife and their minor daughter.

2. The petitioner-husband had earlier moved before this Court in Cr. M.P. No. 4450/01 for quashing the interim order passed by the Principal Judge, Family Court, Jamshedpur whereby interim maintenance was granted to the wife-opposite party and during the pendency of the quashing petition final order was passed and it was withdrawn by the petitioner on 8.8.2002.

3. The brief fact of the case is that the petitioner was married to the O.P. No. 2 on 15.4.1993 at Jamshedpur according to the Hindu rites and customs and after the marriage the opposite party wife came to her husband's house and started living there. On the consummation of the marriage, a female child was borne on 29.12.1994, who is living with her mother Smt. Aparna Banerjee. It was the case of the wife Smt. Aparna Banerjee that since the very beginning of her marriage she was persecuted, tortured and ill-treated rentlessly by the husband Saranan

Banerjee as well as by the members of his family for the cause of dowry and for that Aparna Banerjee filed a complaint vide C/I Case No. 653/98 against the husband Saranan Banerjee and the members of his family on various allegations that he was dangerous and desperate and lascivious type of person who with the oblique and sinister motive against his wife and minor daughter terrorized them and put them in panic stricken condition. The husband was a man of means having his service in Telco besides, landed properties and side business. His monthly income from all sources was Rs. 30,000 and that he was not maintaining his wife (petitioner) and minor daughter Sayanika Banerjee and as such both were entitled to maintenance from him.

4. The husband Saranan Banerjee appeared on summoned in the proceeding u/s 125, Code of Criminal Procedure and filed his show-cause denying and disputing the averments made in the petition of the wife and put his claim that he had obtained an ex parte decree for institution of conjugal rights and, therefore, the wife and their daughter were not entitled to any maintenance. He admitted his employment in Telco in a temporary job and that he was also running business of tea in the name and style of Banerjee Tea House at holding No. C/242, Sonari, Jamshedpur. It was stated in the petition of the wife that the husband-opposite party had purchased luxurious flat in a posh area of Jamshedpur and the fact was admitted. After hearing the parties in the said proceeding the Principal Judge, Family Court, Jamshedpur passed an order of maintenance directing the husband Saranan Banerjee to pay a sum of Rs. 1,000 to his wife per month and Rs. 500 per month to his minor daughter; total sum of Rs. 1,500 to be paid by the husband by 10th day of every month from the date of passing of the order.

5. Against the said order impugned wife Smt. Aparna Banerjee filed Cr. Revision No. 459/02 for the enhancement of the maintenance amount whereas by filing a separate Cr. Revision No. 390/02 the husband-petitioner Saranan Banerjee prayed for the revision of the impugned order and to pass appropriate order.

6. Both the Cr. Revisions were clubbed together for disposal by a common order and in the meantime efforts were taken for conciliation for several dates but ultimately it failed and hence the order on the merit.

7. Learned Counsel appearing on behalf of the wife Aparna Banerjee submitted that the maintenance allowance granted to her as well as her daughter is considerably low and it was asserted that her daughter has started going to school and her fee was Rs. 500 per month and the Principal Judge, Family Court ought to have awarded interim maintenance at higher rate keeping in view the decreasing money value and soaring of the prices of the essential commodities. He further submitted that the husband Saranan Banerjee is enjoying his permanent job at Telco on compassionate ground as against the resignation tendered by the father of the wife Aparna Banerjee. Her father had surrendered his job extending the facility for the employment of his son-in-law and on such sacrifice the Family Court should have awarded maintenance amount to the higher side and as such the impugned judgment is liable to be modified and the

amount is liable to be enhanced.

8. On the other hand, learned Counsel appearing on behalf of the petitioner Saranan Banerjee submitted that on account of the constant intervention of the father of Aparna Banerjee the relation between the husband and wife became from bad to worse and suddenly on his instance, Aparna Banerjee left her matrimonial home on 4.9.1998 with her daughter without rhyme and reason. The husband visited the parental home of his wife to take her back where he was assaulted and finding no other way out the husband Saranan Banerjee filed a suit u/s 9 of the Hindu Marriage Act for a decree for restitution of conjugal rights and it was decreed in his favour against the wife Aparna Banerjee in Matrimonial Suit No. 112/98 (Annexure).

9. Learned Counsel further submitted that neither any appeal was preferred against the said decree by the wife Aparna Banerjee nor she ever returned to the house of her husband with daughter and as such the petitioner filed an execution case in the Court below for the execution of decree. Since the said decree has not been set aside the decree of restitution on conjugal rights has attained its finality.

10. Learned Counsel pointed out that the statement of the wife that her husband Saranan Banerjee was earning nearly Rs. 30,000 per month was absolutely false and baseless, and no document was produced in support of such statement made in the petition u/s 125, Cr.P.C. As a matter of fact, the petitioner is unemployed who was working in Telco as temporary workman and since May, 2001 his temporary service has been terminated (Annexure 2) and not only the petitioner has got no source of income but it is very difficult for him to sustain and under the circumstances, the Court below committed grave error by directing the petitioner for making payment to the tune of Rs. 1,000 for his wife and Rs. 500 to his daughter per month as their maintenance. The Family Court did not appreciate that the wife Aparna Banerjee on her own volition left house of husband and in spite of the decree of the restitution of conjugal rights she failed to comply the order and as such she is not entitled to get any amount as maintenance. It would not be out of place to mention that Aparna Banerjee and the members of her family have instituted several criminal cases as contained in paragraph No. 25 of the petition under different Sections of IPC and a proceeding u/s 107, Cr.P.C. had also drawn against him. In the backdrop of a number of criminal cases instituted against the husband the order passed against the husband awarding maintenance amount to the wife and his daughter is not sustainable in the eyes of law.

11. Finally it has been submitted that since the wife is not ready to live with her husband in spite of conciliation and efforts taken by this Court and also in view of the decree of restitution of conjugal rights as claimed by the husband, the wife Aparna Banerjee is not entitled to maintenance at all.

12. Having regard to the facts and circumstances of the case from the perusal of

the order impugned passed by the Principal Judge, Family Court, Jamshedpur though I find that the pleading of the wife Aparna Banerjee that her husband had been earning Rs. 30,000 could not be established, it was gathered that the husband had been earning Rs. 3,000 to 3,500 per month in course of his temporary employment in Telco. It is also established that the husband has tea-stall of his own and that he purchased a flat. On the basis of such assessment and finding the amount of maintenance awarded to the tune of Rs. 1,000 to the wife Aparna Banerjee and Rs. 500 to their daughter per month does not call for interference in revision. But now the fact remains that the husband Saranan Banerjee had obtained a decree u/s 9 of the Hindu Marriage Act for restitution of conjugal rights as against Aparna Banerjee and in spite of conciliation and efforts she is not inclined to live with her husband on the plea that a case for the offence u/s 498A, IPC was pending against the husband on the allegation of torture, misbehaviour, demand of dowry and many other allegations and for such reason she is apprehensive at the hands of her husband Saranan Banerjee. The judgment passed and decree prepared u/s 9 of the Hindu Marriage Act for restitution of conjugal rights is decree, which cannot be executed by force. I am, therefore, of the opinion that the maintenance amount awarded to the wife Aparna Banerjee and her daughter cannot be swept and set aside only on the ground that she was not inclined to abide by the decree of the restitution of conjugal rights prepared against her. The order passed by the Principal Judge, Family Court, Jamshedpur in Misc. Case No. 99 of 1998/70 of 2001 on 28th June, 2002 does not call for interference and it is upheld and maintained.

13. Accordingly, both the Cr. Revisions are disposed of.