
(2019) 06 JH CK 0032

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1135 Of 2012

Saryu Paswan @ Sarju Paswan

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 13-06-2019

Acts Referred:

Protection Of Women from Domestic Violence Act, 2005 — Section 12

Citation : (2019) 06 JH CK 0032

Hon'ble Judges : Anubha Rawat Choudhary, J

Bench : Single Bench

Advocate : R.S. Mazumdar, Jasvinder Mazumdar, Nishant Kumar Roy, A.K. Sahani

Final Decision : Disposed Off

Judgement

1. Heard Mr. R.S. Mazumdar, learned senior counsel appearing on behalf of the petitioner along with Mrs. Jasvinder Mazumdar, Advocate and Mr.

Nishant Kumar Roy, Advocate.

2. Heard Mr. A.K. Sahani, counsel appearing on behalf of the opposite party no. 2.

3. Nobody appears on behalf of the State.

4. The relief as prayed by the petitioner is as under:-

â??This application has been filed for quashing the order dated 30.04.2012 passed by Sri Parth Sarthi Ghosh, learned Judicial Magistrate, Dhanbad,

whereby and whereunder a petition filed by the present petitioner in connection with C.P. Case No. 1157/2011 regarding maintainability of the petition

filed by the opposite party no. 2 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter to be referred as the

â??Act 2005â??) was dismissed.

For quashing the order dated 10.5.2012 passed by learned Sessions Judge,

Dhanbad, whereby and whereunder, a revision being Cr. Rev. No. 117 of

2012 preferred by the present petitioner against the order dated 30.04.2012 passed by Sri Parth Sarthi Ghosh, learned Judicial Magistrate, Dhanbad

was dismissed.â??

5. After elaborate argument referring to the various documents filed along with the supplementary affidavit, counsel for the petitioner submits that it

stands admitted by the opposite party no. 2 that she is wife of one Haider Ali and not that of the petitioner and accordingly the case itself was not

maintainable before the learned court below. He submits that the point regarding maintainability of the case has not been properly considered by the

learned court below in the impugned order dated 30.4.2012 and the learned court below has wrongly held that evidence of the parties are at variance

regarding factum of marriage and accordingly the issue requires evidence. He further submits that vide subsequent order dated 10.05.2012 interim

maintenance has been granted and there is a direction for day to day proceedings.

6. Counsel for the opposite party no. 2 on the other hand submits that the opposite party no. 2 has also adduced certain evidence in support of her

claim of marriage with the petitioner and the point of marriage requires evidence. The counsel has strongly disputed the submissions made by the

petitioner on the basis of the supplementary affidavit filed in this case. He submits that these aspects of the matter can only be looked into by the

learned court below when the evidences are adduced by the parties. He refers to the impugned order passed in the main application. He submits that

the learned court below has not rejected the plea of the petitioner, but has simply stated that these issues can be looked into at the stage of evidence.

7. Counsel for the opposite party no. 2 further submits that during pendency of this petition, the learned court below had directed for payment of

interim maintenance and also for day to day proceedings of the case such that the entire controversy is resolved, but on account of interim order

passed by this court, the matter has not proceeded since 2012. He further submits that it would be for the ends of justice if the matter is finally

directed to be decided. So far as interim maintenance is concerned, he submits that by an order passed by this court on the 11.06.2019, the petitioner

has already been directed to deposit the entire amount of interim maintenance

with up to date payment before the learned court below. He submits that the opposite party no. 2 may be permitted to withdraw the same.

8. Upon this, counsel for the petitioner submits that on account of the facts and circumstance of this case where there is a serious dispute regarding the maintainability of the case and the factum of marriage itself, the amount which has been directed to be deposited by the petitioner before the learned court below, if permitted to be withdrawn by the opposite party no. 2 during pendency of this case, the same should be fully secured by way of bank guarantee. Counsel for the opposite party no. 2 on this, submits that his client would withdraw the amount of interim maintenance only to the extent the opposite party no. 2 furnishes bank guarantee before the learned court below and no more. He further submits that the petitioner should be directed to continue deposit of the interim maintenance on every month till the matter remains pending before the learned court below. He submits that the opposite party no. 2 is ready for expeditious disposal of the case.

9. After hearing the counsel for the parties, this court finds that there is serious contest regarding the relationship of petitioner and opposite party no. 2 which requires evidence. Accordingly the order dated 30.04.2012 passed by the learned court below does not call for any interference.

10. So far as the impugned order dated 10.05.2012 is concerned, there is already an order directing the petitioner to deposit the interim maintenance before the learned court below within a period of one month from 11.06.2019. It is further directed that the petitioner will go on depositing interim maintenance before the learned court below till the matter is ultimately decided by the learned court below. The opposite party no. 2 is permitted to withdraw the amount of interim maintenance during the pendency of the case only to the extent the opposite party no. 2 secures the amount by way of bank guarantee. For the ends of justice, the matter should be expeditiously decided by the learned court below who has already passed an order for day to day proceeding of the matter. Parties are directed to co-operate for final disposal of the case. The learned court below is directed to decide the case preferably within a period of three months from today. The impugned order dated 10.05.2012 is accordingly modified to the aforesaid extent.

11. Let this order as well as order dated 11.06.2019 be communicated to the court below through FAX.

12. It is made clear that this court has not gone into the merits of the rival contention of the parties and any observation made in this order will not prejudice the case of either of the parties before the learned court below.
13. This petition is disposed of with aforesaid observations and directions.