
(2012) 04 PAT CK 0117

In the Patna High Court

Case No : Cr. Revision No. 1974 of 2009

Sumari Kumari @ Sumon Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-04-2012

Acts Referred:

Citation : (2012) 04 PAT CK 0117

Judgement

Ahsanuddin Amanullah, J.—Criminal Revision No. 1949 of 2009 has been filed by the husband challenging the order dated 12.11.2009 passed by the Principal Judge, Family Court, Begusarai in Case No. 6M/85 by which the amount of maintenance earlier granted of Rs. 100/- per month in favour of the wife has been enhanced to Rs. 3,000/- u/s 127 of the Code of Criminal Procedure, 1973 (hereinafter to referred as the "Code"). Criminal Revision No. 1974 of 2009 has been preferred by the wife against the same order challenging the amount of Rs. 3000/- per month fixed as monthly maintenance praying that the same be enhanced.

2. The brief facts relevant for the disposal of the present revision applications are as under. The petitioner of Criminal Revision No. 1949 of 2009 was married to the petitioner of Criminal Revision No. 1974 of 2009 in the year 1979. Out of the wedlock two girl children were born. Later on, the wife moved out from the matrimonial home and started living separately with her father alongwith the two children. On 18.8.1986 on an application filed by the wife, the court awarded to Rs. 250/- as monthly maintenance in favour of the wife and her two daughters. Out of this amount Rs. 100/- per month was for the wife. It appears that the wife filed a petition before the District Magistrate concerned seeking half of the salary payable to the petitioner and consequent thereupon the Civil Surgeon started paying half of the salary to the wife which was challenged before this Court in C.W.J.C. No. 10195 of 2001 and by order dated 27.7.2009 this Court set aside the same holding it as illegal and without jurisdiction. Thereafter, the wife filed a petition u/s 127 of the Code on 19.8.2004 which was followed by another petition on 31.8.2006 for seeking enhancement in the monthly maintenance. The

husband also filed a petition for recalling/cancelling of the order impugned by which his wife has been awarded maintenance. The impugned order is a composite order on all such applications.

3. From the impugned order it is clear that Rs. 3,000/- per month maintenance has been fixed in favour of the wife which was payable with effect from 19.8.2004. The arrears of maintenance were directed to be utilised by the wife for the marriage expenses of the daughters.

4. Learned counsel appearing on behalf of the husband has submitted that the wife is gainfully employed inasmuch as she is a Middle School Teacher in a Government Middle School in the district of Banka and earns sufficient amount so as to maintain herself. It is thus submitted that as per Section 125 of the Code, she is not entitled to any maintenance as she would not come under the category of wife who is unable to maintain herself. In support of the contention learned counsel has relied upon a decision of the Hon''ble Supreme Court in the case of Chaturbhuj Vs. Sita Bai, , the relevant being at paragraph-8. It is also submitted that the wife had voluntarily and without sufficient cause withdrawn from the company of the husband and on this ground also as per the requirement of law, she is not entitled to any maintenance. It is further submitted that the petitioner has since retired and his pension is about Rs. 10,000/- per month.

5. Learned counsel appearing for the wife submits that in view of the fact that the petitioner at the relevant time was earning more than Rs. 20,000/- per month her prayer for grant/payment of half of the salary was in accordance with law and in tune with the ground reality. It is submitted that the wife does not have sufficient amount so as to maintain herself as well as her two daughters who are still studying. It is said that the money would be required for their marriages since they are still unmarried. Learned counsel in support of his contention has relied upon the decision of the Hon''ble Supreme Court in the case of Jagdish Jugtawat Vs. Manju Lata and Others, for the proposition that the maintenance can be awarded to the children even beyond the age of majority in view of the combined reading of the provisions of the Code as well as the Hindu Adoption and Maintenance Act. He has also relied on a decision of this Court in the case of Subhash Roy Choudhary Vs. State of Bihar and Others, in which also this Court has held that even unmarried daughters are entitled to claim maintenance u/s 125 of the Code. Learned counsel has also relied on the decision of Hon''ble Supreme Court in the case of Vinny Parmvir Parmar Vs. Parmvir Parmar, in which the quantum of monthly maintenance to the wife has been fixed taking into consideration the adequacy of the amount as well as the status before her marriage and the amount to which she was used to while she was unmarried. In that view of the matter, it is submitted that half of the salary/pension received by the husband is reasonable and adequate.

6. Learned counsel for the husband by way of reply has countered the plea of learned counsel for the wife with regard to seeking of maintenance for the daughters on the ground that they are admittedly major and have not come

before this Court for any relief. It is thus submitted that the Question cannot be gone into by treating the litigation as a proxy on behalf of the daughters by the wife. It is further submitted that without going into the adequacy, the husband, taking into consideration the moral and social responsibility with regard to the unmarried daughters, has paid Rs. 2,52,100/- which, as stipulated in the order was to be used for the purpose of marriage of the daughters which now closes the chapter with regard to the said issue. However, learned counsel for the petitioner submits that to show his bona fide and also taking a fair stand, he is ready to deposit Rs. 1,25,000/- each in the name of the two daughters which may also be utilized at the time of their marriages. Learned counsel with regard to the claim of fixation of monthly maintenance to the wife has reiterated his stand and stated that now she is employed in a Government School as a Teacher which has not been denied and thus this Court can take cognizance of the same. It is further submitted that it is a fact that the Government Teacher earns enough to maintain not only himself/herself but his/her family members. It is thus submitted that the wife not having any other liabilities has sufficient money and she is able to maintain herself and the husband should not be burdened with the liability to pay any further amount to her.

7. This Court has heard the parties at length, gone through the decisions relied upon by them as well as the impugned order and the pleadings and other documents brought on record. The contention of learned counsel for the husband so far as the claim of the daughters is concerned that since they have not approached this Court, this Court cannot go into the area as to whether they are entitled for any maintenance, is upheld. There is no legal or otherwise justification for the admittedly major daughters not to come before this Court for any relief and thus this Court in the present proceedings would not like to go into that area. As far as the claim and counter claim with regard to the liability of the husband to pay the maintenance amount and/or for enhancing the amount already fixed by the impugned order, this Court agrees with the contention of learned counsel for the husband that in the facts and circumstances of the present case and on the basis of the admitted position, the wife cannot be said to be under the category of one who is unable to maintain herself. In view of the fact that there is no rebuttal of the fact that she is not working as teacher in a Government School, this Court holds that she is deemed to be able to maintain herself from the pay and emoluments received as such.

8. This Court, in view of the offer made voluntarily on behalf of the husband for depositing a sum of Rs. 1,25,000/- each in the name of the daughters, directs that the same may be done within three months from today. The said amount would be deposited before the Principal Judge, Family Court, Begusarai in Case No. 6M/85 through two bank drafts in the name of the two daughters who shall be at liberty to collect the same after giving due receipt. This would absolve the husband from any obligation to pay any amount on the head of marriage expenses with regard to said two daughters. This would, however, not mean that the daughters are precluded from claiming their shares in the property/assets of

their father which they may do in accordance with law.

9. In view of the discussions made hereinabove, this court is inclined to interfere with the order impugned and the same is set aside with regard to fixation of monthly maintenance in favour of the wife, the husband shall not be liable to pay monthly maintenance as fixed. This shall not preclude the parties to move before the court of competent jurisdiction u/s 127 of the Code, if so required in future, depending on any change in the circumstances warranting the same. Accordingly, these applications stand disposed of in the aforementioned terms.