

(2019) 05 JH CK 0021

In the Jharkhand High Court

Case No : Criminal Revision No. 1006 Of 2014

Swapan Chakraborty

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 10-05-2019

Acts Referred:

Indian Penal Code, 1860 — Section 498A
Code Of Criminal Procedure, 1973 — Section 125

Citation : (2019) 05 JH CK 0021

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : M. M. Pal, Mahua Palit, S.C. Roy, Abhay Kumar Tiwari, Birendra Burman

Final Decision : Dismissed

Judgement

1. This application is directed against the order dated 14.07.2014 in Maintenance Case No.155 of 2008 passed by the learned Principal Judge, Family Court, Ranchi whereby the learned court below has directed the petitioner to pay maintenance of Rs.4,000/- per month to the opposite party no.2. The learned court below has further directed the petitioner to pay Rs.3,000/- towards expenses.

2. The brief facts of the case is that the marriage between the petitioner and opposite party no.2 was solemnized on 24.04.2005 in accordance with Hindu rites and ceremonies at Edalhatu, Morabadi, within the District of Ranchi. At the time of marriage the petitioner had demanded a sum of Rs.1 lakh in cash and 7 Tola gold ornaments and some other household articles which were fulfilled by the parents of the opposite party no.2. After marriage the opposite party no.2 went to her matrimonial home on 22.04.2005 and lived there peacefully for some time but soon thereafter, a demand of Rs.1 lakh in cash and one Hero Honda Motorcycle was made by the petitioner. Due to non-fulfillment of the demand, the opposite party no.2 was subjected to mental and physical torture. She was also restrained from co-habiting with the petitioner by the in-laws and she was always

assaulted by the petitioner and his family members. It has further been alleged by the opposite party no.2 that she was not allowed to enter into the kitchen, due to non-fulfillment of the demand and she was finally compelled to leave her matrimonial home in the month of February, 2006. Since then she started living with her elder sister at Edalhatu. It was also alleged that the petitioner neglects and refuses to maintain the opposite party no.2 even though several times she went to her matrimonial home but her husband and his family members abused and extended threat to kill her. It is further stated that she is unable to maintain herself. It was further alleged that the petitioner is a teacher in Central School, Hehal, and earns Rs.26,000/- per month. Besides, the petitioner has landed property and double storied house and he also derives income to the tune of Rs.20,000/- per month from house rent and he also earns Rs.20,000/- per month from private tuition. The opposite party no.2 is now dependent upon her sister and as such she has claimed maintenance of Rs.10,000/- per month.

3. The petitioner appeared and filed his show cause. The marriage has been admitted by the petitioner but other averments regarding demand of dowry and torture have been denied by him. The petitioner has further stated in his show cause that at the time of marriage the petitioner was unemployed person and the elder sister of the opposite party no.2 who had approached him for marriage had also made a proposal that the opposite party no.2 is a trained nurse and the household affairs will be managed by the income of both of them. After marriage the opposite party no.2 stayed at her matrimonial home only for four months and thereafter, she left her matrimonial home in the month of August, 2005, without the knowledge of the petitioner and his parents. It was specifically contended that no demand of dowry was ever made either at the time of marriage or subsequently. The entire allegations levelled by the opposite party no.2 are false and concocted. It was further stated that the father of the petitioner is a retired person and living in a small rented house. It has been categorically stated in the show-cause that the opposite party no.2 was never neglected by the petitioner and his parents. In fact, the brother-in-law of the petitioner Ashish Kumar Adhikari who instigated the opposite party no.2 to file the case of maintenance against him and also a case under Section 498-A I.P.C. The petitioner and his old parents were made accused in the criminal case. It was further stated by the petitioner that he was working as teacher and he used to get a consolidated amount of Rs.4,000/- per month from Satsang and Art of Living and also by playing 'Dholak' and 'Tabla', but he was removed from the service/organization as he was sent to jail in the case under Section 498-A I.P.C. The petitioner further stated in his show-cause that he does not own any landed property and as such question of deriving income from house rent does not arise. He is still ready to keep his wife with full dignity and respect and since the opposite party no.2 has left her matrimonial home on her own as such she is not entitled to get any maintenance and the case may be dismissed.

4. At this stage, it is pertinent to mention here that earlier an ex-parte judgment was passed by the learned court in Maintenance Case No.155 of 2008 filed by

the opposite party no.2 which was challenged by the petitioner in Criminal Revision No.1005 of 2010. This Court vide its order dated 29.03.2011 set aside the order dated 25.01.2010 passed in Maintenance Case No.155 of 2008 and remanded the case to the court below with a direction to pass a fresh order on the basis of evidence produced on behalf of both the parties. Thereafter, the impugned order has been passed by the learned court below. In the case after remand, the petitioner appeared and contested the case.

5. Before the learned court below the opposite party-wife has examined 3 witnesses in support of her case whereas the petitioner examined two witnesses on his behalf. The opposite party no.2 who is P.W.1 before the court below has fully supported her case. In her cross-examination at para-14, she has stated that there is huge landed property belonging to her father-in-law and the petitioner-husband is entitled to get his share. She has further stated in her cross-examination that her husband had told her that he was working as teacher in Central School and earning Rs.26,000/- per month as his salary. She has categorically stated in para-21 of her deposition that she inquired at her own level and came to know that her husband was working as a Teacher in Central School. The other two prosecution witnesses also supported the case of opposite party no.2.

6. The petitioner examined himself as O.P.W.2 and admitted the marriage and further stated that he performs musical programmes in the social institutions like Ramkrishna Mission, Art of Living and Anukul Chandra Thakur and gets remuneration. In his cross-examination at para-23 he has admitted that he was working as a Laboratory Assistant and worked till 1996. He has also admitted that a daughter was blessed with his first wife and thereafter he got married with the petitioner in 2005. In para-48 of his cross-examination he has stated that the house rent in which he is residing with his father is Rs.1,500/- per month but he does not pay the entire rent rather he takes help from his brother. On the other hand, his father who has been examined as O.P.W.1 has specifically stated in his evidence that the entire rent of Rs.1,500/- is paid by the petitioner.

7. In view of this fact, the evidence of this petitioner appears to be far from truth. From his evidence it appears that he has sufficient means to maintain the opposite party no.2 but he neglects and refuses to maintain her. In para-62 of his cross-examination, he has admitted that he has not made any arrangement for the residence and maintenance of the opposite party no.2.

8. The learned court below after critically examining the entire evidence of both the parties came to the conclusion that the opposite party no.2 is the legally wedded wife of the petitioner who is residing separately pursuant to the demand of Rs.1 lakh and other articles by him. Learned court below has also categorically held that the opposite party no.2 is unable to maintain herself as she has no source of income.

9. Mrs. M. M. Pal, the learned Senior counsel has vehemently argued that the

learned court below has not given any finding with respect to earning of petitioner and fixed the maintenance of Rs.4,000/- per month which is excessive in the background that the petitioner is not having any regular source of income.

10. The counsel for the opposite party however supported the order and submitted that the said Rs.4,000/- is not at all excessive seeing the dearth.

11. Heard both the parties. The obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many comforts. Sometimes her faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. An order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right. Thus, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.

12. The petitioner has admitted in his show cause as well as in his evidence that he is connected with several institutions where he performs musical programme. It has also come in the evidence that the petitioner used to pay the house rent where he is living with his father. The argument of learned Senior counsel appears to be correct that there is no regular source of income of the petitioner but at the same time it also transpires that he is earning from music programmes and also helping his father economically. Even admitting that Rs.4,000/- is an excessive amount but it is difficult to accept that the same amount is excessive even in 2019 because of the price rise. The petitioner cannot absolve himself from maintaining his wife and the amount fixed by the learned court below is not excessive at least in the present scenario.

13. In view of the aforesaid discussions, the petitioner has failed to make out a case so as to warrant any interference from this Court and as a result, this revision application being devoid of merit is dismissed on contest.