
(2011) 03 JH CK 0104
In the Jharkhand High Court
Case No : Criminal Rev. No. 1005 of 2010

Swapan Chakraborty

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2011) 7 RCR(Criminal) 249

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Judgement

D.K. Sinha, J.—This Criminal revision is directed against the order dated 25.01.2010 passed by the Principal Judge Family Court, Ranchi in maintenance case No. 155/08 by which the Petitioner husband was directed to pay monthly maintenance @ Rs. 7000/- per month to the opposite party No. 2 Reena Chakraborty under the proceeding initiated u/s 125 of the Code of Criminal Procedure.

2. The marriage between the parties is not disputed.

3. Heard Mrs. Paul, Learned Senior Counsel for the Petitioner and Mr. Ravindra Kumar Mehta on behalf of the opposite party No. 2. In spite of the adjournment no counter affidavit has been filed in this criminal revision.

4. Mrs. Paul, Learned Senior Counsel, assailed the order impugned passed in the proceeding u/s 125 of the Code of Criminal Procedure on the ground that the Petitioner husband is unable to pay Rs. 7000/- to the opposite party No. 2 for maintenance and no opportunity was given him to place his case and no notice was ever served upon him. The complainant-wife claimed u/s 125 of the Code of Criminal Procedure that the Petitioner-husband is a teacher and was getting Rs. 26000/- per month and he also earns Rs. 20000/- per month from tuition, besides this, he earns Rs. 20000/- from house rent, but no documents were produced in support of any of the above contentions.

5. The order was passed *exparte* assuming that the contentions made by the complainant-wife was true without substantiating it. It was upon the complainant to prove her case that Petitioner's earning was about Rs. 26000/- per month by all means. The Petitioner husband has controverted such source of income in paras 9, 10 and 11 of the petition, that he was never a teacher at any point of time and he was unemployed and used to get consolidated amount of Rs. 4000/- per month from the Satsang by playing Dholak and Tabla. I find from the argument advanced on behalf of the Petitioner that the complainant failed to prove her claim u/s 125 of the Code of Criminal Procedure and the amount fixed to a sum of Rs. 7000/- to be paid by him per month to the complainant wife, cannot be sustained under law. Neither any opportunity was given to the Petitioner-husband of being heard nor the complainant wife could be able to prove the case by producing any documentary evidence.

6. In the given facts and circumstance the order impugned dated 25.01.2010 passed by the Principal Judge Family Court, Ranchi in maintenance case No. 155/08 is set aside. The Principal Judge Family Court, Ranchi is directed to pass an order afresh on the basis of the evidence produced on behalf of the Petitioner husband and the complainant O.P. No. 2 if she so likes.

7. It is relevant to mention here that this order has been passed in presence of the counsels of both the parties and the Principal Judge Family Court, Ranchi. So the proceeding may be reinitiated after two weeks on fixing a date and no fresh notice need be issued either to the Petitioner husband or the complainant wife.