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(2009) 10 JH CK 0022

In the Jharkhand High Court

Wahid Mian — APPELLANT

Vs

The State of Jharkhand and Nisahar Bibi — RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 125
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 498A

Citation : (2009) 10 JH CK 0022

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Judgement

D.K. Sinha, J.—This criminal revision is directed against the order impugned dated 27.9.2008 passed by Sri Kishore Kumar Srivastava, Principal Judge, Family Court, Dumka in Criminal Miscellaneous Case No. 155 of 2006 by which petition filed u/s 125 of the Code of Criminal Procedure on behalf of the opposite party No. 2 was allowed calling upon the petitioner to pay maintenance a sum of Rs. 500/- per month to his wife-opposite party No. 2.

2. Admitted facts are that the petitioner had married to opposite party No. 2 in the month of March, 2004 according to Muslim customs in village Chitragaria and thereafter they started living at Banspahari within the district of Dumka. It was alleged in the petition u/s 125 of the Code of Criminal Procedure that the husband-petitioner had developed intimate relation with another girl and for that she was subjected to mental and physical torture. She further alleged that the husband-petitioner and her other in-laws demanded a sum of Rs. 40,000/- in cash, a Sonata Watch, one bicycle and ornaments of gold and silver but due to non-fulfillment of their demand the petitioner-husband and the members of his family removed her(opposite party No. 2) from her matrimonial home in the month of July, 2005 and since then she was living at her parental home. She was unemployed, unable to maintain herself and was dependent upon her father, who was not in a position to support her for a long period. Disclosing the source of income of the husband-petitioner, she stated that he was holding 25 Bighas of

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agricultural land with earning of Rs. 60,000/- to Rs. 70,000/- per annum. That apart, he was having business of woodcraft having earning of Rs. 5000/- to 7000/- per month. On the basis of such income of the husband-petitioner, she claimed maintenance allowance for a sum of Rs. 1500/- per month. On the other hand, in his causes shown, the husband-petitioner explained that he had persuaded his wife-opposite party No. 2 at several occasions to live with him but without response. She was living at her parental home without consent and against the will of her husband. Petitioner further explained that he had no landed property and even no business of any kind, a simple daily-wage earner, with a monthly income of Rs. 1200/- whereas the petitioner husband asserted that the complainant was working as a labourer in Bidi Factory and having earning of Rs. 40/- per day.

3. Advancing his argument, the learned Counsel further submitted that the petitioner had preferred a petition u/s 281 of the Mulla''s Mohammedan Law for restitution of conjugal rights with the assertion that he was leading a hard life in absence of his wife and that his wife opposite party No. 2 had been forcibly detained by her father Matlab Mian and that he had expressed his readiness and willingness to keep her with due dignity and humility.

4. Learned Counsel finally assailed the impugned order on the ground that the Principal Judge ignored that the petitioner husband was a daily-wage earner with monthly income of Rs. 1200/- and that the complainant-wife had willfully deserted the husband-petitioner and was living at her parental home who did not return to join the society of her husband in spite of persuasion and in exercise of his legal right for restitution of conjugal rights. The petitioner husband had asserted by swearing affidavit that the earning of Ms wife was Rs. 40/- per day and she was able to maintain herself, yet, ignoring such aspects, the husband-petitioner was called upon by the impugned order to pay Rs. 500/- per month as maintenance allowance to his wife opposite party No. 2.

5. I have carefully gone through the order impugned and found that a case for the alleged offence u/s 498A and other Sections of the Indian Penal Code as also u/s 4 of the Dowry Prohibition Act was initiated against the husband-petitioner wherein he was convicted by the learned 5th Additional Sessions Judge, F.T.C., Dumka in Sessions Case No. 233 of 2006. Such conviction of the petitioner indicates torture, harassment in connection with demand of dowry and that it has got corroborative value for consideration of a petition filed by the opposite party-wife u/s 125 of the Code of Criminal Procedure. Therefore, the offer expressed by the petitioner about his readiness and willingness to keep and maintain her does not inspire confidence.

6. Having regard to the facts and circumstances of the case, I find that the Principal Judge held that though the witnesses produced and adduced on behalf of the husband-petitioner were consistent that the earning of the wife of the petitioner was Rs. 40/- per day by working in Bidi manufacturing unit but none of the said witnesses admitted having seen such transaction except that they had

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heard from some one. On the other hand, it was admitted by the petitioner-husband that his earning was Rs. 1200/- per month though he denied his earning from business or from any landed property. On placing reliance upon the admission of the husband-petitioner that his earning was Rs. 1200/- per month, the learned Principal Judge rightly and rationally allowed the proceeding u/s 125 of the Code of Criminal Procedure calling upon the petitioner to pay Rs. 500/-per month to the complainant-wife as monthly maintenance and the learned Counsel appearing for the petitioner failed to show any illegality or irregularity in such order so as to call for interference.

7. There being no merit, this criminal revision is dismissed.

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