
(2019) 10 JH CK 0082

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 204 of 2016

Yadav Sundi And Ors

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 24-10-2019

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 302, 323, 324, 448

Citation : (2019) 10 JH CK 0082

Hon'ble Judges : Shree Chandrashekhar, J;Ratnaker Bhengra, J

Bench : Division Bench

Advocate : Rajendra Prasad Gupta, Vinay Kumar Tiwari

Final Decision : Allowed

Judgement

1. The petitioner has challenged the order dated 06.08.2015 passed in Maintenance Case No.191 of 2013.
2. The petitioner is husband of O.P. No.1.
3. Marriage between the parties is not disputed. One girl-child has been born from the wedlock of the parties. She was aged about 7 years when a petition under section 125 Cr.P.C was filed.
4. In the proceeding under section 125 Cr.P.C, the applicants; wife and daughter of Pradeep Kumar, have examined two witnesses and the petitioner has examined three witnesses. The applicant-wife has claimed that her husband was not providing food and clothes and on 19.05.2007 after assaulting her thrown her alongwith her daughter out of the matrimonial home. The petitioner is working under Railways is not in dispute. His wife has claimed that his salary is Rs.32,000/- per month and he had additional income of Rs.3 Lac to Rs.4 Lac per annum from agriculture. She has also claimed that he is getting Rs.10,000/- rental from a shop and her father-in-law is getting pension. In her cross-examination, she admits that till 2007, she was employed as A.N.M. The petitioner has examined himself as a witness and asserted that his salary is

Rs.20,000/- per month out of which Rs.3,600/- is spent on bank loan and Rs.3,000/- is spent on his daughter. He is spending about Rs.8,000/- to Rs.10,000/- on treatment of his mother.

5. On the basis of the materials produced on record, the learned Family Court Judge has held as under:

14. "From perusal of records, it transpires that as per the version of petitioner and her witnesses, she is lawfully wedded wife of O.P. Petitioner, in her evidence has fully supported the case and the contents of the petition finds sufficient corroboration from the evidence of P.W.1 & P.W.2 also. It further appears from the record and evidences of petitioner's witnesses that a dowry case was filed by the petitioner against the O.P. The petitioner along with her minor daughter was living separately from O.P about two years, but the O.P has neither looked after her nor gave any maintenance amount. It further appears that the O.P has deposed in his evidence and in his show-cause that the petitioner is doing her job as A.N.M under Jharkhand Government and she is getting sufficient salary from her job, but the O.P did not produce any cogent and reliable evidence regarding employment of petitioner no.1. It further appears that on the basis of compromise between both the parties, on 13-01-2014 this court has directed the O.P to pay Rs.5,000/- per month as interim maintenance amount to the petitioners, but the O.P did not comply the said order. It further appears from the evidences of petitioner and O.P that the O.P is getting Rs.32,000/- per month as his salary and the O.P himself admitted in his evidence that his gross salary is of Rs.24,000/-, which is also corroborated by the salary slip filed by the petitioner and O.P itself. It is also brought to light that the O.P has forsaken the petitioner and willfully neglecting to maintain her and thereby failing to discharge his legal and social obligations. It appears that he is brushing aside his matrimonial responsibility and petitioner is experiencing neglect due to deliberate conduct of O.P. As such, there is sufficient grounds for petitioner no.1 to live separately from O.P.

15. It would be pertinent to point out that Section, 125 Cr.P.C clearly provides that, "If any person having sufficient means neglects or refuses to maintain- (a) his wife, unable to maintain herself, (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, a Magistrate of the 1st Class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife and minor child."

6. By now, it is well-settled that the provision under section 125 Cr.P.C is a beneficial provision, benefits of which should not be denied on mere technical objections. The applicants have produced sufficient evidence to maintain a claim under section 125 Cr.P.C, however, the petitioner did not produce authenticated copy of his salary-slip and he has simply said that his salary is Rs.20,000/- per month. His wife has claimed his salary as Rs.32,000/- per month.

7. In view of the fact that the petitioner has failed to rebut the stand of his wife

by producing documentary evidence, which he could have done, his evidence in respect of salary drawn by him cannot be considered.

8. Considering the aforesaid facts and limitations of the revisional jurisdiction, I am not inclined to interfere with the order dated 06.08.2015 passed in Maintenance Case No.191 of 2013 and, accordingly, Criminal Revision No.1040 of 2015 is dismissed.