(2008) CrLJ 1146

Jharkhand High Court

Case No: Criminal Rev. No. 603 of 2010

Basant Pd. Sahu		APPELLANT
	Vs	
The State of Jharkhand and Another		RESPONDENT

Date of Decision: April 10, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125

Citation: (2008) CrLJ 1146

Hon'ble Judges: Harish Chandra Mishra, J

Bench: Single Bench

Advocate: Mohit Prakash, for the Appellant; B.K. Mishra, Advocate For the Opp.Party no. 2, for the Respondent

Final Decision: Dismissed

Judgement

H.C. Mishra, J.
This application has been filed by the petitioner challenging the order dated 4.6.2010 passed by the learned Principal Judge, Family Court, Lohardaga, in Maintenance case no.13 of 2005, whereby the court below has directed the petitioner to make the payment of Rs.4,000/- as maintenance to his deserted wife, who is opposite party No.2 in this case. The Court below has also directed the petitioner to make payment of Rs.4,000/- as maintenance for the minor son of the petitioner living with Opposite Party No.2. At the very outset, it may be stated that the learned counsel for the petitioner has confined the challenge of the impugned order only so far as it relates to the payment of maintenance to the opposite party No.2 and has submitted that he is not challenging the order whereby, the petitioner was directed to make payment of Rs.4,000/- for maintenance of his minor child.

2. It appears that the opposite party No. 2, Smt.Nandita Sahu had filed an application u/s 125 Cr.P.C against the petitioner claiming to be the legally wedded wife of the petitioner

and alleging the cruelty and torture due to which she was driven away from the matrimonial home along-with her minor son. It is stated that the petitioner was working as an Engineer in ONGC and he was getting salary of more than Rs.40,000/-. It was also contended that the petitioner had also an income of more than Rs.20,000/- per month from the house property and accordingly, the Opposite Party No.2 had claimed maintenance of Rs.17,000/- per month for herself and Rs.8,000/- per month for her minor son from the petitioner.

3. It appears from the impugned order that the marriage between the parties is admitted and it is also admitted that both the parties are living separately. It is also the admitted fact that the petitioner was working as an Engineer in ONGC, but the claim of the petitioner was that he had resigned from his service and he had no income and as such, he was not able to maintain his wife. The petitioner had also claimed that his wife had an earning from ''Sarv Sikhsa Abhiyan'' and as such, she was able to maintain herself. It also appears that the evidences were adduced by both the parties in the Court below and on the basis of the evidence of the parties, the Court below came to the conclusion that at the time of filing of the maintenance case, the petitioner was an Engineer under the job of ONGC, the most reputed nationalized company in India and accordingly, in comparison with the opposite party (petitioner herein), the economical status of the applicant (Opposite Party No.2 herein), even though she is working in ''Sarv Siksha Ahiyan'' cannot be held to be substantial one. The Court below also came to the conclusion that even though the petitioner contended that he had left the service of ONGC and presently, he is an unemployed person, but no document was brought on record to show that he had resigned from ONGC and accordingly, it can safely be said that the petitioner had taken the plea of being unemployed, only to avoid to give maintenance to his wife and child. The Court below also held that it cannot be considered that the petitioner who was serving in ONGC was living as an unemployed person. Accordingly, the Court below directed the petitioner to make the payment of maintenance in favour of his wife @ Rs.4,000/- per month. It also appears that the income of Rs. 40,000/- per month of the petitioner, while he was in service of ONGC, is an admitted fact in the evidence of the petitioner himself.

4. Learned counsel for the petitioner has submitted that the order passed by the Court below, so far as it directs the petitioner to make the payment to his wife is absolutely illegal, inasmuch as, from the impugned order, it would appear that even the applicant wife had admitted in the Court below that the petitioner had left the service of the ONGC, but she has also alleged that the petitioner had joined a Multi National Company, for which, no proof was brought on record. Learned counsel for the petitioner further submitted that Section 125 of the Cr.P.C prescribes that if any person having sufficient means, neglects or refuses to maintain his wife who is unable to maintain herself, then only the liability of maintaining the wife arises. It has been submitted that in the present case, since the petitioner had left the service of ONGC the petitioner is not having sufficient means and the Opposite Party no.2, wife who is also working in ''Sarv Sikha

Abhiyan'' has sufficient means to maintain herself and accordingly, the impugned order could not have been passed by the Court below directing the petitioner to make payment of Rs.4,000/- per month as maintenance to the opposite party wife. Learned counsel accordingly, submitted that the impugned order cannot be sustained in the eyes of law and is fit to be set aside.

5. Leaned counsel for the Opposite party no.2 on the other hand, submitted that it is well settled principle of law that the Revisional Court can interfere only if there is any illegality in the order, or there is any material irregularity in procedure, or there is an error of jurisdiction. It has been submitted that the High Court under its revisional jurisdiction is not required to enter into re-appreciation of evidence recorded in the order granting maintenance and the Revisional Court would not substitute its own finding and upset the maintenance order recorded by the Court below. In this connection, learned counsel has placed reliance upon the decision of the Hon''ble Supreme Court of India in Pyla Mutyalamma @ Satyavathi Vs. Pyla Suri Demudu and Anr. reported in 2012 (1) Cr.R 51 S.C.

6. Learned counsel for the Opposite Party No.2 further submitted that even though the Opposite Party Wife is working in ''Sarv Sikha Abhiyan'' but the Court below has recorded the finding that she was only getting remuneration on per day basis, meaning thereby that she is not getting any fixed salary from the said engagement. Learned counsel further submitted that the opposite party is entitled to get the maintenance of such an amount so that she can live in a reasonable comfort considering her status and mode of life as she used to live with her husband and it is also equally well settled that even if the wife is having an earning, it is not sufficient in itself to rule out the application filed u/s 125 of the Cr.P.C, rather it has to be established that with the amount she earned, she was able to maintain herself. In this connection, learned counsel has placed reliance upon the decisions of the Hon''ble Supreme Court of India in Chaturbhuj Vs. Sita Bai, reported in A.I.R 2008 SC 530, as also in Vinny Parmvir Parmar Vs. -4- Parmvir Parmar, reported in 2011 AIR SCW 4340, wherein it has been laid down that the Court has to consider the status of the parties, their respective needs and the Court has also to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life she used to live when she lived with her husband.

7. Learned counsel accordingly submitted, that admittedly the opposite party lastly resided with the petitioner while he was working as an Engineer in ONGC and she cannot maintain the same standard of life with her earning which she is getting as per day remuneration in ''Sarv Siksha Abhiyan''. Learned counsel accordingly, submitted that there is no illegality in the impugned order passed by the Court below, worth interference in the revisional jurisdiction.

8. After having heard the learned counsels for both sides and upon going through the record, I find that the Court below has properly taken into consideration the evidence on

record and has found that the petitioner who was admittedly an Engineer working in ONGC was able to maintain his wife. The Court below has also given a finding that the opposite party No.2 wife was only getting per day remuneration in "Sarv Siksha Abhiyan" and accordingly, her earnings cannot held to be substantial one. The Court below taking into consideration the fact that the petitioner was admittedly working as an Engineer in ONGC, it cannot be considered that he is living as an unemployed person, has directed the petitioner to make the payment of maintenance of Rs.4,000/- per month in favour of his wife. Accordingly, I do not find any illegality and / or irregularity in the impugned order, worth interference in the revisional jurisdiction. Hence, there is no merit in this revision application and the same is hereby, dismissed.