

Alijan Mian Vs The State of Jharkhand and Another

Court: Jharkhand High Court

Date of Decision: July 5, 2013

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 125

Citation: (2014) 1 DMC 768 : (2013) 4 JLJR 540

Hon'ble Judges: Harish Chandra Mishra, J

Bench: Single Bench

Advocate: K.S. Nanda, for the Appellant;

Final Decision: Dismissed

Judgement

Harish Chandra Mishra, J.

Heard learned counsel for the petitioner and learned A.P.P. for the Prosecution. The petitioner is aggrieved by

the order dated 29th January 2013 passed by the learned Principal Judge, Family Court, Hazaribagh, in Maintenance Case No. 01 of 2007,

whereby, the petitioner has been directed to make the payment of Rs. 2000/- per month for the maintenance to his deserted wife.

2. The opposite party No. 2 filed the application u/s 125 of the Cr.P.C., claiming herself to be the legally wedded wife of the petitioner.

Admittedly, she was a widow and she was having two sons from her first husband, which was accepted by the petitioner. According to the case of

the wife, the petitioner led the conjugal life with her for a considerable period and out of this wedlock also, they were blessed with two children.

Subsequently, the petitioner married another lady and drove out the opposite party No. 2 from the matrimonial home. Claiming that she had no

means to maintain herself and the petitioner at that time was an employee in CCL, and was getting the salary of Rs. 13,269/- per month, apart

from other income, the application for maintenance was filed.

3. The petitioner appeared in the Court below and filed his show-cause from which the marriage between the parties is admitted. It is also admitted

that the petitioner married another lady and is also having issues from the other lady. The petitioner, however denied the liability of making the

payment of maintenance to his wife, stating that he was always ready to keep her and maintain her.

4. In the Court below, both the parties had adduced the evidence in support of their respective cases. It appears from the discussion of the

evidence in the impugned order that by the time, the evidence was going on, the petitioner had already retired from service and according to the

evidence of the opposite party No. 2 in the Court below, the petitioner was getting the pension of Rs. 4,000/- per month. In her evidence, the

opposite party No. 2 also claimed that the petitioner had earning Rs. 5,000/- per month from doing the work as private electrician and was also

earning from house rent and the agricultural income and thereby, she claimed that in all, the petitioner earned about Rs. 16,000/- per month. The

other witnesses examined on behalf of the opposite party No. 2 also supported her case, even on the point of income of the petitioner.

5. As opposed to this, the petitioner who had also examined himself as a witness, stated that he was only getting Rs. 2500/- as pension and he has

no other income. The other witness examined by the petitioner in the Court below, supported the case of the petitioner. However, the impugned

order shows that in his cross-examination, the petitioner admitted that he was also cultivating about 40 (forty) maunds of paddy from his agriculture

field and he was also cultivating vegetables.

6. On the basis of the evidence on record, the Court below came to the conclusion that in view of the second marriage of the petitioner, the wife

had reasonable cause for living separately and the Court below also found that the petitioner was concealing his income and during cross

examination, he admitted that he had income from the agriculture also. The Court below accordingly, found that petitioner was able to make the

payment of at least Rs. 2,000/- per month to his deserted wife and has passed the order accordingly.

7. Learned counsel for the petitioner has submitted that the impugned order passed by the Court below is absolutely illegal. The petitioner has a

large family to maintain and the amount of pension which the petitioner is getting, is not sufficient to maintain his entire family and the petitioner is

not financially in a position to make the payment of Rs. 2000/- per month to the opposite party No. 2. Claiming that the opposite party No. 2 is

living with her two sons from her first husband, learned counsel submitted that the impugned order cannot be sustained in the eyes of law.

8. Learned counsel for the State, on the other hand, has submitted that there is no illegality in the impugned order.

9. After having heard the learned counsels for both the sides and upon going through the impugned order, I find that in the present case, the dispute

is only regarding the income of the petitioner. The marriage between the parties is an admitted fact and it also stands admitted that the petitioner

has married another lady. Accordingly, the opposite party No. 2 has a reasonable ground for living separately, and the fact that the lady is living

with her sons from the first husband, shall not absolve the petitioner from the responsibility of maintaining his first wife.
On the point of income of

the petitioner, I find sufficient force in the reasoning given by the Court below that the petitioner had tried to conceal his actual income, inasmuch

as, he had stated that he had earning of Rs. 2500/- only from his pension and he had no other source of income, but in his cross-examination, he

admitted about his income from agriculture also. In that view of the matter, the Court below has rightly come to the conclusion that the petitioner

had sufficient means to maintain his wife and has directed him to make the payment of Rs. 2000/- per month only, towards the maintenance of his

deserted wife, which cannot be said to be excessive by any parameter. Accordingly, I do not find any illegality and/or irregularity in the impugned

order passed by the Court below, worth interference in the revisional jurisdiction. There is no merit in this application, which is accordingly,

dismissed.