

(2012) 07 JH CK 0050

Jharkhand High Court

Case No: Writ Petition (S) No. 3 of 2007

Sanjeev Tape

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: July 18, 2012

Acts Referred:

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

Hon'ble Judges: Alok Singh, J

Bench: Single Bench

Advocate: K.S. Nanda, for the Appellant; A. Allam, Senior Standing Counsel II., for the Respondent

Judgement

Alok Singh

1. The petitioner is assailing the order dated 9.9.2004 passed by the Sr. Superintendent of Police, whereby direction was issued to deduct Rs. 3000/- per month from the salary of the petitioner to pay the same to Smt. Jayoti Dewgan as maintenance. Learned counsel for the petitioner has vehemently argued that Smt. Jayoti Dewgan is not the wife of the petitioner. He has further stated that maintenance can be claimed by Smt. Jayoti Dewgan either by making an application u/s 125 of the Code of Criminal Procedure or under the provisions of Hindu Adoption and Maintenance Act, wherein the Court shall be in position to decide the factum of marriage and entitlement of maintenance of Smt. Jayoti Dewgan. He has further argued that Sr. Superintendent of Police has absolutely no right to decide the disputed issue as to whether Smt. Jayoti Dewgan is the wife of the petitioner or she is entitled for maintenance.

2. Mr. A. Allam, learned Sr. Counsel appearing for the State has fairly submitted that before passing the impugned order Sr. Superintendent of Police has directed for enquiry to find out as to whether Smt. Jayoti Dewgan is first wife of the petitioner.

Having found that Smt. Jayoti Dewgan is the first wife, impugned order was passed on humanitarian ground, so that wife of the petitioner may not die in starvation.

3. On being asked as to whether there is any provision under the Police Manual authorizing the Sr. Superintendent of Police to adjudicate the issue of marriage and to pass order of maintenance, learned counsel for the parties could not show any such law.

4. In view of the fact that factum of marriage is seriously disputed by the petitioner, it seems that order impugned should not have been passed and parties ought to have been directed to approach the competent Court to get their lis decided. In the peculiar facts and circumstances, the present case is disposed of with a direction that the impugned order shall not be given effect to and parties shall be at liberty to get their lis decided on the factum of marriage as well as on the entitlement of maintenance by the competent Court.