(2012) 08 JH CK 0073

Jharkhand High Court

Case No: Criminal Revision No. 1094 of 2010

Ranjit Prasad		APPELLANT
	Vs	
Nibha Sinha		RESPONDENT

Date of Decision: Aug. 9, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 125
- Penal Code, 1860 (IPC) - Section 498A

Citation: (2013) 1 AJR 440 : (2013) 1 DMC 406 : (2012) 4 JLJR 142

Hon'ble Judges: Harish Chandra Mishra, J

Bench: Single Bench

Advocate: Atanu Banerjee, for the Appellant; Tarun Kr. Sinha for the O.P. No. 2, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

H.C. Mishra, J.
Heard learned counsel for the petitioner and learned counsel for opposite party wife. Petitioner is aggrieved by the order dated 8.2.2010 passed by the learned Principal Judge, Family Court, Giridih, in Maintenance Case No. 335 of 2008, whereby in an application filed u/s 125 of the Cr.P.C., by the opposite party wife in the Court below, the Court below has directed the petitioner to make the payment of Rs. 1,500/- per month as maintenance to his deserted wife from the date of filing of the application.

2. From the impugned order it appears that opposite party wife had filed the application u/s 125 of the Cr.P.C. in the Court below, claiming herself to be the legally wedded wife of the petitioner and alleging that she was subjected to cruelty and torture for demand of dowry and ultimately she was driven out from her matrimonial home on 26.4.2008 and thereafter she was living with her parents. She has stated that she was not able to maintain herself and her husband was earning

Rs. 8,000/- per month from his shop of motor parts and he has other earnings also from the house property. The O.P. wife accordingly, claimed the maintenance of Rs. 3,000/- per month from the petitioner.

3. It further appears from the impugned order that the petitioner filed his reply in the Court below objecting the prayer, but the fact remains that the marriage between the parties is admitted. Thought the allegations against him have been denied by the petitioner in the Court below, but it appears that a criminal case for the offence u/s 498A I.P.C. had also been filed against the petitioner.

4. The impugned order shows that both the parties adduced evidence in support of their respective claims in the Court below. The opposite party wife had examined three witnesses including herself, in the Court below, who have supported her case. The petitioner also examined two witnesses and from the evidence of the petitioner adduced in the court below, it appears that he has deposed that he had earlier been sent to jail in the case filed against him by his wife, due to which, his shop wars closed and he had become unemployed. However, he has again admitted that he used to earn and he was working as mechanic. It also appears that he had clearly stated in his cross-examination in that he shall not keep his wife alongwith him. Taking into consideration these facts, as also taking into consideration the fact that the petitioner is able-bodied person and admittedly he is working as a mechanic, the Court below has directed the petitioner to make the payment of Rs. 1500/- per month as maintenance to his deserted wife from the date of filing the application.

5. Learned counsel for the petitioner has submitted that the impugned order passed by the Court below is absolutely illegal, inasmuch as, the Court below has not given any definite finding as regards the income of the petitioner and has also not assigned any reason for granting the maintenance from the date of application. Learned counsel for the petitioner accordingly, submitted that the impugned order cannot be sustained in the eyes of law.

6. Learned counsel for opposite party wife on the other hand submitted that there is no illegality in the impugned order, inasmuch as, the Court below has found that the petitioner was working as a mechanic and accordingly, has directed him to make the payment of Rs. 1,500/- per month as maintenance to the O.P. wife. Learned counsel has submitted that there is no illegality in passing the order for maintenance from the date of application and there is no requirement in law for assigning any reason for passing the order of maintenance from the date of application. In this connection, learned counsel has placed reliance upon the decision of the Supreme Court of India in Shail Kumari Devi and Another Vs. Krishan Bhagwan Pathak @ Kishun B. Pathak, , wherein it has been held as follows:--

47. We, therefore, hold that while deciding an application u/s 125 of the Code, a Magistrate is required to record reasons for granting or refusing to grant maintenance to wives, children or parents. Such, maintenance can be awarded from

the date of the order, or, if so ordered, from the date of application for maintenance, as the case may be. For awarding maintenance from the date of the application, express order is necessary. No special reasons, however, are required to be recorded by the Court, in our judgment, no such requirement can be read in sub-section (1) of Section 125 of the Code in absence of express provision to that effect.

(Emphasis supplied)

7. Having heard learned counsel for both the sides and upon going through the record, I find that the O.P. wife has sufficient reasons for living separately from the petitioner. Even the petitioner had stated in his evidence in the Court below that he is not ready to keep his wife alongwith him. It further appears from the impugned order that the Court below has found that the petitioner is working as mechanic and accordingly, the petitioner has been directed to make payment of Rs. 1,500/- per month as maintenance to his wife, which in my considered view cannot be said to be excessive by any parameter. I also find that the law is well settled in Shail Kumari Devi''s case (supra) that the Court is not required to assign any special reason for passing the order for maintenance from the date of filing the application. Accordingly, I do not find any illegality and/or irregularity in the impugned order worth interference in the revisional jurisdiction. There is no merit in this revision and the same is hereby dismissed.