

(2006) 09 JH CK 0020**Jharkhand High Court****Case No:** None

Sargam Rana

APPELLANT

Vs

Sohar Rana

RESPONDENT

Date of Decision: Sept. 5, 2006**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 125, 397, 401
- Penal Code, 1860 (IPC) - Section 498A

Citation: (2007) 1 JCR 500**Hon'ble Judges:** Dilip kumar sinha, J**Bench:** Single Bench**Final Decision:** Allowed**Judgement**

@JUDGMENTTAG-ORDER

D.K. Sinha, J.

This Cr. Revision application under Sections 397 and 401 of the Code of Criminal Procedure is directed against the impugned order dated 11.8.2003 passed by Shri A.D.P. Singh, Principal Judge, Family Court, Hazaribagh in Maintenance Case No. 134 of 2000 whereby and whereunder the Principal Judge rejected the petition of the petitioner, Sargam Rana, filed u/s 125 of the Code of Criminal Procedure though the minor sons of the petitioner were jointly awarded maintenance @ Rs. 1000/- per month from August, 2002 to be paid by father-opposite party, Sohar Rana till the minor sons of the petitioner attain their majority.

2. The brief fact of the case is that a proceeding u/s 125 of the Code of Criminal Procedure was initiated on the? application of the petitioner in the Court of Chief Judicial Magistrate, Hazaribagh giving rise to Maintenance Case No. 134 of 2000 against her husband-opposite party claiming a sum of Rs. 1000/- per month being her maintenance. The case was eventually transferred to the Principal Judge, Family Court, Hazaribagh. The admitted fact was that the petitioner was married to

opposite party on 17.5.1995 according to Hindu rites and customs. It was consummated and two children were born out of their wedlock on 5.6.1997 and 12.11.1998 respectively. The complainant-petitioner alleged that after their marriage her husband and in-laws started demanding Rs. two lakhs in cash and since their expectations of demand of dowry were not fulfilled, she was subjected to cruelty by physical torture and assault giving instance, once upon a time opposite party with the members of his family attempted to kill her by setting her on fire. She was finally driven out from her matrimonial home on 31.5.2000 after retaining her all valuable ornaments and since then she was living in her parental home with effect from 1.6.2000. It was alleged that on account of assault at the hands of her husband and father-in-law. In connection with demand of Rs. two lakhs at her matrimonial home, a case u/s 498-A was instituted against the opposite party and other members of his family.

3. By bringing about the present proceeding she claimed a sum of Rs. 1000/- per month as maintenance u/s 125 of the Code of Criminal Procedure on the ground that she had no means for her maintenance, whereas the opposite party was a school teacher earning Rs. 5000/- per month, having sufficient landed property and his annual income there from was Rs. One lakh. It is alleged that inspite of having sufficient means the opposite party refused to maintain her. The petitioner filed another maintenance case No. 106 of 2001 on behalf of her two minor sons against the opposite party represented through mother, being the natural guardian and after enquiry a sum of Rs. 1000/-was awarded to both her sons as maintenance amount per month.

4. The opposite party appeared in the proceeding before the Principal Judge, Family Court, Hazaribagh and in course of enquiry evidence were adduced on behalf of both the parties. The main contention of the "opposite party was that the petitioner had left her matrimonial home on her own accord and she had almost completely absolved her husband on the charge that she was driven out from his house. The father of the petitioner, FW 1 had made an endorsement on the declaration that he was taking away his daughter with him as she was not willing to live with her husband (Ext. A). The fact was admitted by the petitioner that before leaving her matrimonial home she made a declaration that she was leaving her matrimonial home on her own accord. In her-cross examination she admitted her such declaration that she was leaving her matrimonial home on her own accord (Ext. A/1).

5. The learned Court below observed that the petitioner was graduate and she was not expected to make any declaration against her interest without any impending danger and such declaration got fortified when her father (FW 1) confirmed the declaration of his daughter who had made identical endorsement on such declaration. Pursuant to such observation the learned Principal Judge, Family Court held that in view of the fact that the petitioner left her matrimonial home on her own accord and she was staying in her parental home without any reasonable

excuse, as such she was not entitled to maintenance for herself from her husband-opposite party. On the other hand the Principal Judge directed the opposite party to continue according maintenance to his two minor sons.

6. The learned Counsel submitted that the Court below failed to take into consideration that the petitioner had left her matrimonial home due to torture and assault at the hands of her husband and other in-laws and on 31.5.2000 she was driven out from her matrimonial home by retaining all valuable articles. The learned Court below failed to consider that attempt was made on her life by setting her on fire and out of fear she elected to live with her parents. The petitioner has no means to survive whereas the opposite party/husband is serving as a teacher in D.A.V. School, Kathara, Bokaro drawing handsome salary. Finally it has been submitted that the learned Court below failed to rely upon the material evidence adduced on behalf of the petitioner.

7. Mr. Pandey Neeraj Rai learned Counsel appearing for the opposite party controverted the contention of the petitioner and submitted that the charges levelled by the petitioner for the offence u/s 498-A of the Indian Penal Code against the opposite party and other in-laws were disproved and the accused were acquitted. As a matter of fact, the petitioner was hostile and uncompromising with her in-laws from very beginning and never reconciled herself to live in the joint family and all the time she insisted upon her husband to leave his parental house. Finally it has been submitted that the learned Principal Judge, Family Court after careful scrutiny of the petition filed u/s 125 Cr.P.C. disbelieved the contents made therein and observed that she had left her matrimonial home after making declaration that she was leaving on her own accord absolving the liability of her husband. The learned Court below denied the maintenance to the petitioner which does not call for interference of this Court.

8. Having regard to the facts and circumstances of the case, I find that the petition of the petitioner u/s 125 Cr.P.C. for the maintenance by the opposite party was refused by the Court below solely on the ground that the petitioner had left her matrimonial home on her own accord by making declaration of such fact. The learned Court below perhaps lost sight of the background in which the petitioner was compelled to leave her matrimonial home. A declaration of a married destitute lady can be obtained in various manner in coercive situation at her matrimonial home by extending threats and putting risk at her life which can well be inferred from the contents of the petition in a proceeding u/s 125 of the Code of Criminal Procedure.

9. I, therefore, find and hold that the order impugned passed by the Principal Judge. Family Court, Hazaribagh in Maintenance Case No. 134 of 2000 in a proceeding u/s 125 of the Code of Criminal Procedure is not based upon sound reasoning and substantial evidence, therefore, unsustainable, which calls for interference of this Court.

10. In the result the order impugned dated 11.8.2003 passed in Maintenance Case No. 134 of 2000 by the Principal Judge, Family Court, Hazaribagh is set aside with direction to pass order afresh on careful evaluation of the materials on record, in accordance with law within two months.

11. With the aforesaid observation this Cr. Revision application is allowed.