

(2012) 07 JH CK 0084

Jharkhand High Court

Case No: Cr.Revision No. 325 of 2011

Samod Paswan @ Subodh

APPELLANT

Vs

The State of Jharkhand and
Another

RESPONDENT

Date of Decision: July 7, 2012

Acts Referred:

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

Hon'ble Judges: Harish Chandra Mishra, J

Bench: Single Bench

Advocate: Kumar Nilesh, for the Appellant; H.K.Sikarwar, Assistant Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

H.C.Mishra

1. Heard learned counsel for the petitioner and the learned counsel for the State as also learned counsel for the Opp. Party No.2, the complainant wife, who has appeared through advocate. This application is directed against the order dated 20th September 2010 passed by learned Principal Judge, Family Court, Dhanbad, in M.P. Case No. 196 of 2009, whereby, in an ex-parte proceeding u/s 125 of the Cr.P.C., the Court below has directed the petitioner to make the payment of maintenance @ Rs.3,000/-per month to the Opp. Party No.2. The impugned order also shows that the proceeding was taken ex-parte as because the petitioner did not appear in spite of notice.

2. Learned counsel for the petitioner has submitted that the impugned order passed by the Court below is absolutely illegal, inasmuch as, from the impugned order itself, it is apparent that it was the case of the Opp. Party No.2 in the Court below that the marriage between the parties had been solemnized on 20.4.2008 at Gaya and thereafter, she was subjected to cruelty and torture and ultimately, she was

ousted from her matrimonial home. The opposite party No.2 had examined herself as P.W.1 in the Court below, from which, it appears that she had deposed that her husband has another wife also, from whom, they have got two children, one is eight years old and another is eight months old. Learned counsel for the petitioner accordingly, submitted that the opposite party No.2, who was married to this petitioner on 20.4.2008 cannot have a child aged eight years, and as such, said opposite party No.2 is the second wife of the petitioner and she is not entitled to get any maintenance from him, as the marriage between the parties, if any, is void. Learned counsel for the petitioner accordingly, submitted that the impugned order cannot be sustained in the eyes of law.

3. Learned counsel for the Opposite party No.2, on the other hand, has submitted that there is no illegality in the impugned order, inasmuch as, though it is admitted that the husband had two wives, but it may be a case that the wife having child aged about eight years might be a widow, having the child from before this marriage with the petitioner. Learned counsel accordingly, submitted that it cannot be inferred that the opposite party No.2 is the second wife of the petitioner and as such, there can be no illegality in the impugned order passed by the Court below on this score alone.

4. After having heard the learned counsel for the petitioner and learned counsel for the opposite party No.2, I find that according to the opposite party No.2 herself, she was married to the petitioner on 20.4.2008 and her husband is having two wives and there is a child aged eight years. This child aged eight years cannot be the child of the petitioner and as such, the child who is aged eight years must be the child of the first wife of the husband and the opposite party No.2 is the second wife of her husband. The submission of the learned counsel for the opposite party No.2 that the wife having the eight year old child might be the widow having child from before this marriage, cannot be entertained at this stage as this fact ought to have been pleaded and proved by the opposite party No.2 in the Court below. This having not been done, no such inference can be drawn in her favour.

5. In view of the aforementioned discussions, I find that from the evidence adduced by the opposite party No.2 herself, it is apparent that she is the second wife of the petitioner and as such, she is not at all entitled to get any maintenance u/s 125 of the Cr.P.C., the marriage between the parties being absolutely void. As such, the impugned order cannot be sustained in the eyes of law. Accordingly, the impugned order dated 20.9.2010 passed by the learned Principal Judge, Family Court, Dhanbad, in M.P. Case No. 196 of 2009, is hereby, set aside. This revision application thus, stands allowed.