

**(2010) 02 JH CK 0015****Jharkhand High Court****Case No:** None

Amna Khatoon

APPELLANT

Vs

Gafur Ansari

RESPONDENT

**Date of Decision:** Feb. 18, 2010**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 125

**Hon'ble Judges:** Dilip kumar sinha, J**Bench:** Single Bench**Judgement**

D.K. Sinha, J.

This Criminal Revision is directed against the order impugned dated 10.8.2009 passed by the Principal Judge, Family Court, Lohardaga in a proceeding u/s 125 Cr.P.C. by which the claim of the petitioner Amna Khatoon for maintenance to the tune of Rs. 2,000/- per month from the Opposite party Gafur Ansari was rejected.

2. The learned Counsel appearing on behalf of the petitioner at the outset submitted that though the opposite party had taken the plea of divorce as against the petitioner by filing a show cause in a proceeding u/s 125 Cr.P.C. but such a plea was not accepted in view of the decision of the Apex Court as he took such plea in the show cause for the first time and not on earlier occasion .Witnesses were consistent in their evidence that the petitioner was an old aged lady who was married with the opposite party almost. 39 years ago and now she used to live at her parental home. It was stated that two acres of land was transferred in her favors but it was a barren land and owing to her old age she was not capable to maintain herself by undertaking cultivation of the said land. Besides, admittedly she was getting old age pension at the rate of Rs. 400/- per month under the Old Age Pension Scheme run by the State Government but payment was not made on the regular basis for which she had to move from pillar to post.

3. The learned Counsel assailed the impugned order on the ground that without considering the miserable life of the petitioner the learned Principal Judge, Family Court considered the aspect that she was in possession of two acres land and she was getting Rs 400/- as old age Pension and dismissed her petition with the observation:

In view of the above discussed fact I find and hold that the petitioner, Amna Khatoon is the legally married wife of the opposite party, Gafur Ansari and petitioner is living alone willingly in her parents house who has sufficient income for maintaining herself and thus she is not entitled to get any maintenance amount from the opposite party, In the result this maintenance case is hereby dismissed.

4. The learned Counsel submits that witnesses produced on her behalf were consistent that she was tortured at the hands of opposite party and ultimately she was driven out from her matrimonial home. The petitioner had earlier preened a petition for maintenance but since the dispute was resolved with the intervention of well wishers, she returned back to her matrimonial home where her husband-opposite party was living, with second wife and their two sons. Yet, she was again driven out and finding no way out, she settled at her parental home where she is leading a miserable life. Though there was no specific case of the petitioner as to what amount the opposite party was getting by way of pension but P.W.I was consistent that the O.P. had income of Rs. 8000/- per month and therefore at least one thousand should have been given as against her claim of Rs. 2,000/-.

5. On the other hand, learned Counsel appearing for the O.P. strongly opposed the contention, raised on behalf of the petitioner and submitted that the petitioner has got no liability at all except her personal livelihood and for that she is getting old age pension to the tune of Rs. 400/- per month under the Old Age Pension Scheme run by the State Government. Besides, government has granted two acres of land to her for livelihood which would suffice the need of the petitioner to maintain herself.

6. Having regard to the facts and circumstances of the case, I find that the petitioner had not given any definite income of her husband -opposite party in the proceeding either by way of pension or from different sources. However, in view of the statement of the P.W. 1. i.e. earning of O.P. was. stated to be Rs. 8,000/- per month from all sources and it was not controverter by the opposite party in the cross examination of P. W. 1, I observe, therefore, keeping in view of need that Rs.500/- by way of maintenance to the petitioner would suffice to meet the ends of justice. She is already receiving Rs, 400/- as pension under Old Age Pension may be not on regular basis but with the arrears In the result, the opposite party husband is directed to maintain his wife by giving Rs. 500/- per month by depositing the said amount in the Nazarat of the Loherdaga Civil Court in second week of the month from where the petitioner would collect. This order is made effective from 1<sup>st</sup> March, 2010.

7. With the above observation this Cr. Revision is allowed and disposed of.