

(2010) 12 JH CK 0013

Jharkhand High Court

Case No: Criminal Rev. No. 305 of 2010

Mahesh Vijay Vergia @ Mahesh
Kumar Vijay Vergia

APPELLANT

Vs

Smt. Usha Vijay Vergia

RESPONDENT

Date of Decision: Dec. 14, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 127

Citation: (2011) 2 DMC 688

Hon'ble Judges: Jaya Roy, J

Bench: Single Bench

Judgement

Jaya Roy, J.

The Petitioner has filed the instant revision application against the order dated 26th February 2010 passed in Misc. case No. 35 of 2005 arising out of Misc case No. 51 of 1991 by the Principal Judge, Family Court, Ranchi whereby, the trial court has enhanced the maintenance allowance of the opposite party from Rs. 500/- per month to Rs. 75067- per month from the date of filing of the petition i.e. 23.1.2006 u/s 127 of the Code of Criminal Procedure by the applicant petitioner.

2. The case in brief, is that the applicant opposite party earlier filed an application u/s 125 Code of Criminal Procedure against the present Petitioner who is her husband for granting maintenance allowance to her as well as her two sons. The said application was registered as Misc. case No. 5.1 of 1991. In the said miscellaneous case, though the Petitioner appeared but not contested the claim. The trial court after considering the case of the applicant -opposite party, allowed the said miscellaneous petition vide order dated 6th January 1997 and a sum of Rs. 500/- per month was awarded to her from the date of filing of the petition i.e. from 1.6.1991. As the payment was not made by the Petitioner, therefore, they proceeded for realizing the awarded amount. After the constitution of the Family Court, the case was transferred to this Court and after receiving the same on 1.8.2005, the said

case was registered as Miscellaneous case No. 313 of 2005.

3. During the pendency of the said case, the applicant-opposite party filed a petition u/s 127 Code of Criminal Procedure on 23rd January 2006 praying therein for enhancement of the maintenance allowance. She has stated in her petition, filed u/s 127 Code of Criminal Procedure that when she had filed a petition u/s 125 Code of Criminal Procedure, at that time there was a maximum limit of granting maintenance was Rs. 500/- only. Therefore, her maintenance allowance granted by the trial court was limited to the maximum amount. She has further stated that her husband who is the Petitioner in this case, is a contractor and is engaged in various companies, semi government and other private establishments. He now earns more than Rs. 25,000/- per month. The applicant-opposite party is an handicapped lady and she has no source of income. Her father is a retired person as she is handicapped, she has to spend for more than Rs. 2,000/- per month on her treatment. Furthermore, she needs a permanent attendant to look after her.

4. The Petitioner has filed a show-cause stating therein that the applicant-opposite party has filed this petition with a malafide intention and only to harrase the opposite party. The contention of the applicant-opposite party is totally false and fabricated. He has further stated that he hardly earns Rs. 8,000/- per month from all his sources and he has to look after his old parents and two sons who are studying and he cannot even afford to pay Rs. 500/- as awarded to the applicant-opposite party. He has further staled that the applicant-opposite party has one institution in the name and style of "Vijay Vergia" Arts and Handicrafts at Ranchi andjhe has also a business of Gold plated jewellery in the name and style of "Saloni Micro Gold Plate Jewellery". Apart from this, she also organizes Dance, Mehendi and Painting Competition and from all these things, she is earning Rs. 6,000/- per month and also she is capable of doing everything. The opposite party has stated further that he has taken services of a private detective agency and the said agency has given report which supports the contention of the opposite party petitioner. The opposite party herself does not want to live with the petitioner. He has further stated that the applicant-opposite party was directed by the 9th Addl. Judge, Indore (M.P) in Matrimonial case No. 501 of 1999 on 14th May 2001 to come and live with this Petitioner and restored their conjugal life but the applicant-opposite party has not complied the said order till date.

5. The applicant-opposite party has examined two witnesses including herself to prove her case. She has reiterated the facts stated in her original petition. She has stated that she was tortured for demand of dowry and for this, her spinal cord is broken and her entire body is paralysed. Her "stridhan" has not been returned till date by the petitioner. After a long treatment even at present she is unable to walk and move. She has further stated that as she could not go to Indore, her deposition in the criminal case was recorded at Ranchi. She has further stated that after coming to know about the judgment and decree passed in Matrimonial Suit No. 501 of 1999

about the restoration of conjugal relation as stated in the show-cause filed by the opposite party Petitioner, the, applicant -opposite party had written a letter to the Indore Court about her physical inability to come to Indore. Thereafter, the Petitioner had filed a divorce suit at Indore being Matrimonial Case No. 700 of 200?. The applicant-opposite party came to know about this, she approached to the Hon"ble Supreme Court and ultimately, the said Matrimonial case was transferred to this Court and registered as M.T.S No. 09 of 2004 and the said suit was dismissed on 9.9.2004 She has further stated that she has become disable because of cruelty and the assault made by her husband. Even her children have been snatched from her. She is very specifically stated that she has no source of income and she is totally dependent on her father.

6. P.W.2 is the father of the applicant who has fully supported the case of the applicant-opposite party. Though an opportunity was given to the opposite party Petitioner even to further cross examine this witness but this witness has not been cross examined on the material point of earning of the applicant and also on the point of inability of t le applicant.

7. The opposite party who is the Petitioner before this Court has also examined two witnesses to support his case including himself as O.P.W.1. He has stated that his two sons are living with him and studying engineering at Indore and spent in education is about one Lakh which is born by the father of the opposite party-Petitioner. The Petitioner opposite party is not able to maintain even his two children but he is giving education to them because of living in a joint family. He has also supported his contention mentioned in his show-cause and in his evidence.

8. O.P.W.2 Mukesh Nagar is a resident of Indore. He has stated that the opposite party Petitioner is working as a supervisor with a contractor and getting Rs. 8000/- per month. He has also stated that the educational expenditure of the two sons is born by the father of the opposite party. But in the cross examination this witness has stated that the father of the opposite party is living separate in the same house where the opposite party-Petitioner is residing. The father of the opposite party-Petitioner is a government contractor in P.W.D. Ho has also stated that regarding an advertisement of contract work of family of the opposite party-Petitioner published in a Magazine. This witness accepted that he had last seen the applicant when she was hospitalized.

9. The counsel of the Petitioner has submitted that the trial court has not at all considered the case of the Petitioner and enhanced the maintenance amount from Rs. 500/- to Rs. 7,500/- which is wholly arbitrary. He has further contended that there is no evidence either oral or documentary to show the earning of the present petitioner. The trial court has increased an amount without any basis. He has argued further that there is no change of any circumstances for enhancement of the maintenance allowance.

10. The counsel of the sole opposite party has submitted that admittedly, the applicant is the wife of the Petitioner and earlier in Misc. case No. 51 of 1991, the trial court after considering the case of both the parties, granted the maintenance allowance to the applicant opposite party. Therefore, it cannot be said that the applicant is not entitled for any maintenance. The only question is regarding the amount of maintenance. The present application is for enhancement, she has been filed on the ground of change of circumstances firstly that she is totally handicapped and unable to work. Even she has filed a power of attorney executed on 2.4.2009 in favour of her father, authorizing her, father to contest, sign, verify plaint petition and application, to deposit and withdraw the money which shows that she is physically handicapped.

11. The counsel for the opposite party has further contended that though the opposite party Petitioner has alleged that his wife applicant is running a business but none of the witnesses i.e. O.W.1 and O.W.2 has not stated that they have seen the said two shops or the Petitioner doing any business. They have stated that they have come to know from other sources but no evidence has been brought on record to corroborate or prove the same. Thus, the opposite party Petitioner could not prove that his wife has any source of income and she is able to maintain herself.

12. From the impugned order and the materials on record, I find that the Petitioner has admitted the applicant opposite party as his wife and further he is not maintaining her from 1991. Though he has stated in his show cause that the applicant-opposite party doing business and is able to maintain herself but could not prove the same. On the other hand, it has come on the record that the Petitioner who is the husband of the applicant opposite party is working as a supervisor under a contractor. Furthermore, it has also come that the profession of the Petitioner is business. I find the Stand of the Petitioner is not consistent as it has come in the impugned order which is as follows:

In the rejoinder dated 27.4.2006, he has stated that he is earning Rs. 8000/- and his old parents and two sons are dependant on him. Whereas in his deposition as O.W.1 he has stated that the education expense of his sons are being paid by his father. In para 33 he has stated that his father has left the work of contractor five years ago. O.W.2 has stated in para 21 that the O.P and his father are living separately on a different floor of the same house. He has further stated that the father of the O.P is a government contractor. Thus, the statement of O.W.1 and O.W.2 are not consistent with each other and are quite different with the statement made in the rejoinder dated 27.4.2006.

13. It is true that the applicant opposite party could not produce any cheat of paper to show the actual income of her husband.

On overall consideration, in my opinion, a sum of Rs. 5,000/- (Rupees Five thousand only) as her monthly allowance will be just and proper. Therefore, I modify the order

and the Petitioner is directed to pay a sum of Rs. 5,000/- per month from the date of filing of the petition u/s 127 Code of Criminal Procedure i.e. 23rd January 2006. Regarding the arrears amount, the petitioner-husband is directed to pay a sum of Rs. One Lakh per year which will start from January 2011 till the entire arrear amount is paid. Regarding the current maintenance allowance, the Petitioner is directed to pay the same on or by 10th day of each month according to the English Calendar.

With the aforesaid modification, this revision application is disposed of.