

Kurban Ansari Vs The State of Jharkhand and Others

Court: Jharkhand High Court

Date of Decision: Dec. 19, 2014

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 125, 125(1)(d), 125(2), 127
Family Courts Act, 1984 â€” Section 9

Citation: (2015) 2 AJR 320 : (2015) 2 JLJR 12

Hon'ble Judges: Amitav Kumar Gupta, J

Bench: Single Bench

Advocate: Ashutosh Anand, Advocates for the Appellant

Judgement

Amitav Kumar Gupta, J.

The Revision application has been preferred against the order dated 17.01.2013 passed by the learned Principal

Judge, Family Court, Bokaro in M.P. Case No. 93 of 2008, whereby the application of O.P. No. 2 under Section 125 Cr.P.C. has been allowed

with a direction to the petitioner to pay maintenance @ Rs. 5000/- per month to O.P. No. 2.

2. Mr. Ashutosh Anand, learned counsel for the petitioner has assailed the impugned order inter-alia on the grounds, firstly, that the trial court has

failed to appreciate the provisions of Section 125(1)(d) which stipulates that maintenance can be awarded to the father or mother in case they are

unable to maintain themselves. It is argued that the O.P. No. 2 is a retired employee of the Bharat Coking Coal Ltd. (B.C.C.L) and he is getting

pension but this aspect has not been considered by the court below; secondly, the trial court has fixed that the quantum of maintenance @ Rs.

5,000/- without appreciating the fact that the petitioner is saddled with the liability to maintain his family and he has to pay for the schooling and

education for four minor children as also expenses to meet the daily needs of the family; that he has taken loan and has to pay the monthly

installments towards the loan; that money is also required for the marriage for his daughters as and when they attain marriageable age. It is urged

that the O.P. No. 2 is residing with his younger son whose wife is employed as a Nurse in a Government Hospital and the younger son is also

employed there and both of them are earning handsome salary; that the O.P. No. 2 had received the entire sum of gratuity, provident fund, which

is lying with him. Thirdly, it has been contended that the court below has passed the order granting maintenance from the date of application

whereas Clause 2 of Section 125 Cr.P.C. contemplates grant of maintenance from the date of order and if the maintenance is granted from the

date of application then cogent reasons have to be assigned for the same but no reason has been assigned by the court for ordering payment of

maintenance from the date of filing of the application.

3. Learned counsel for the petitioner has urged that the petitioner and O.P. No. 2 had compromised the case which would be evident from the

Annexure-1, whereby, O.P. No. 2 had agreed to withdraw the maintenance petition No. 93 of 2008 on the terms of compromise as enumerated

in the compromise petition dated 23.03.2010; that though O.P. No. 2 has denied the compromise but the order-sheets dated 23.04.2010 to

19.01.2011 (filed as Annexure-B of the counter affidavit), discloses the fact that both the parties were not present in the court subsequent to the

compromise petition. The abstinence of the O.P. No. 2 shows the conduct of O.P. and is indicative of the fact that O.P. was a signatory and

consenting party to the said compromise entered into between the parties out side the court, due to the said agreement the petitioner did not take

necessary steps to adduce evidence to rebut the claim of the petitioner neither did he file the show cause. On the said grounds, it has been urged

that the impugned order has been passed ex-parte and is fit to be set aside. It is argued that the matter be remitted to the court below to decide it

afresh after giving an opportunity to the petitioner to adduce his evidence.

4. Mr. Shailesh, learned counsel appearing on behalf of O.P. No. 2, while countering the arguments advanced by the petitioner contended that it is

admitted case that O.P. No. 2, father of the petitioner, was declared medically unfit and under the scheme of National Coal Wages Agreement

(N.C.W.A.) of the B.C.C.L, had given up his job and the petitioner was appointed in his place. The petitioner had-given an undertaking to

maintain his parents, i.e. O.P. No. 2. It is submitted that the compromise (Annexure-1) relied upon by the petitioner is a forged and fabricated

document and it would be evident from the order-sheets, (Annexure-B), wherein in the order dated 23.02.2010 it is stated that the

conciliation/mediation was taken up accordingly, on subsequent dates, i.e., 23.04.2010 and 15.06.2010, the case was fixed for amicable

settlement of the dispute. It is submitted that the submissions of the learned counsel that O.P. No. 2 had not remained present during the said

period is incorrect and it would be evident from the order-sheets dated 13.08.2010 that, O.R. No. 2 was represented through his lawyer. That on

subsequent dates i.e. on 30.09.2010, the court came to the conclusion that the conciliation has failed and directed the petitioner to file his reply.

That order-sheets dated 04.01.2012 & 15.02.2012 show that ample opportunity was given to O.P. to file his W.S. but he did not file the same.

Thereafter the witnesses were examined by O.P. No. 2 and despite having knowledge that O.P. No. 2 had examined the witnesses the petitioner

did not participate in the proceeding. That no reason has been assigned as to why the petitioner did not file the said compromise petition

(Annexure-1) in the court below. It is contended that there is specific averment in the maintenance application that the petitioner was regularly

paying maintenance amount till November, 2007 but thereafter the petitioner stopped paying the maintenance whereupon O.P. No. 2 called upon

him to provide the maintenance amount but he refused to do so. In such circumstances the petition under Section 125 of the Cr.P.C. was filed on

11.07.2008. It is pointed out that an application dated 28.01.2009 was also filed by O.P. No. 2 informing the court that the court had given an

opportunity to both the parties to resolve their dispute out side the court. That O.P. No. 2 along with his wife had gone to the petitioner for talks so

as to honour the court's direction but petitioner had manhandled and abused O.P. No. 2 and his wife and stated that he would not pay a single

farthing. This substantiates the fact that the compromise petition is forged and fabricated indicative of the dishonest intention-of the petitioner so as

to mislead the court with an intent to shirk his responsibility and to escape the liability for paying the maintenance to his aged father.

It is urged that O.P. No. 2 has specifically stated that he was declared medically unfit hence, the contention of the learned counsel for the petitioner

that O.P. No. 2 is getting pension is rather misplaced as he has neither filed the W.S nor controverted this fact in the present revision. That the

impugned order has been passed in accordance with the provisions of law. That the petitioner has not paid" a single farthing after passing of the

impugned order. Thus the revision application is fit to be dismissed.

5. Heard. The contention of the learned counsel for the petitioner that the impugned order granting maintenance from the date of application

without assigning any reason is against the provisions of Section 125(2) of the Cr.P.C., while placing reliance on the decisions in the case of Anil

Besra Vs. State of Jharkhand, Rojlina Kisku and Patras Besra and in the case of Amna Khatoon Vs. Gafur Ansari to buttress his argument, is not

acceptable, as the said decisions have been rendered in the factual matrix applicable in that particular case apparently the said facts are not

applicable to the attending facts of the present case.

6. It has clearly emerged from the arguments advanced and the averments made in the application under Section 125 Cr.P.C., that the petitioner

had paid maintenance till November, 2007 whereafter he stopped paying maintenance whereupon O.P. No. 2 and his wife asked the petitioner to

pay the maintenance amount, but the petitioner refused to pay any maintenance despite the fact that the petitioner was given employment in

B.C.C.L in lieu of O.P. No. 2 who had given up his job as he was found medically unfit. This fact has not been denied by the petitioner. The

petitioner was providing maintenance to O.P. No. 2 till November, 2007. There is the probability that he had given an undertaking, while getting

employment in place of his father/O.P. No. 2, that he would provide for the-maintenance to his father/O.P. No. 2.

In the emergent facts of the case the court below has rightly ordered for payment of maintenance from the date of the application in terms of

Section 125(2) of Cr.P.C.

7. The argument advanced on behalf of the petitioner that since O.P. No. 2 was not physically present in the court on the dates as pointed out is

indicative of the fact that the compromise had taken place. Such argument is also not tenable, because that it is evident that the court had given the

parties an opportunity to resolve and amicably settle" their dispute outside the court in terms of the provisions of Section 9 of the Family Courts

Act. The object of Family Courts Act is for amicable settlement of dispute. From the facts exposited, it is clear that if such a compromise, as

asserted by the petitioner, had taken place then there is no plausible explanation forthcoming on behalf of petitioner as to what the cause or reason

which prevented him or Ms lawyer, in not bringing such compromise to the notice of the court. Admittedly the petitioner was represented by a

lawyer and he cannot take the plea that he was not aware about the nuances of law.

The contention of petitioner is also not acceptable in view of the fact that despite ample opportunity given by the court the petitioner did not file his

show cause whereafter O.P. No. 2 examined himself and other witnesses. Apparently, the petitioner had knowledge of the said proceeding as on

27.03.2012 after examination of witnesses the petitioner was represented by his lawyer still he did not take any steps to adduce any evidence or,

document in support of his contention. In the attending facts it is abundantly clear that the impugned order has not been passed ex-parte or has

been passed without giving proper opportunity to the petitioner.

8. So far as the quantum of maintenance is concerned, it is admitted by the petitioner that his take home salary is Rs. 25,000/-. The order of

payment of Rs. 5,000/- as maintenance i.e. 1/5 of the salary is not exorbitant or on a higher side. The plea to remand the case to the court below is

unwarranted in view of the discussion and the material facts which are indicative of willful absence of the petitioner in the proceeding in the court

below.

9. The object of Section 125 Cr.P.C. is not to punish a person who is bound by moral/social obligation to maintain his parents rather the provision

is to ensure that the dependent be it father, mother, wife or any other dependent under the provision, should not be forced live a life of beggary or

destitution.

In the backdrop of the discussion made above and the facts of the case, there is no cogent reason for interfering with the order dated 17.01.2013

passed by the court below, accordingly, the revision is hereby dismissed.

The liberty is reserved with the petitioner to invoke the provisions of Section 127 of Cr.P.C. in the event of any change of circumstance for

alteration, modification of the order passed under Section 125 Cr.P.C.