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(2016) 4 ECrC 198 : (2017) 1 PCCR 107

JHARKHAND HIGH COURT

Case No: Criminal Revision No. 600 of 2015.

Dr. Tulsi Kumar Saha, son of Late Bhikho Saha Resident of Telipara (Debipara) Hirapur, PO, PS and District - Dhanbad - Petitioner @HASH State of Jharkhand - Opposite Party — APPELLANT

Vs

RESPONDENT

Date of Decision: May 17, 2016

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) - Section 125

Citation: (2016) 4 ECrC 198 : (2017) 1 PCCR 107

Hon'ble Judges: Ravi Nath Verma, J.

Bench: Single Bench

Advocate: Mr. Atul Kumar, Advocate, for the Petitioner; Mr. Ravi Kumar Singh, A.P.P, for the State; Mr. Pratiush Lala, Advocate, for Opposite Party No. 2

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Mr. Ravi Nath Verma, J. - The petitioner by filing this revision application under Section 19(4) of Family Courts Act has questioned the legality

of the order dated 21.02.2015 passed by the Principal Judge, Family Court, Dhanbad in Maintenance Case no. 12 of 2011 whereby and where

under, he has been directed to pay Rs.3,000/- per month to his wife-opposite party no.2 Bina Saha and Rs.2,000/- each per month to the minor

daughters till they are married or gainfully employed.

2. Bereft of unnecessary details, the facts, which is relevant for the proper adjudication of this revision application, in short, is that the marriage of

present opposite party no.2 was solemnized with this petitioner on 26.02.2000 according to Hindu Rites and Rituals and from the wedlock, the

couple blessed with two daughters but aggrieved by the born of two daughters, the claimant-wife was subjected to physical and mental torture and

he deserted his wife and two minor children on 04.10.2009 and refused to maintain them. Since then the opposite party no.2 along with her two

daughters have been living in her Maika and they have no independent source of income to maintain her small family including the two minor

daughters rather they are completely dependent upon her parents, who have their own expenses. On 08.01.2011, when the petitioner lastly

refused to provide money for maintenance, the aforesaid case was filed with a prayer to direct the petitioner to pay Rs.15,000/- towards

maintenance to the claimant-wife and Rs.10,000/- towards maintenance to the two minor children.

3. The present petitioner filed show cause in the court below stating that opposite party no.2- his wife is living separately at her own and even after

his several attempts, she refused to come to the marital home. Thereafter, a suit for grant of decree of dissolution of the marriage of the parties with

mutual consent was filed but due to exorbitant demand of permanent alimony by the wife, the suit could not be decreed and subsequently the same

was dismissed as withdrawn and though this petitioner is a medical practitioner but he has no monthly income from medical practise as he is mainly

relying on treatment by the alternative medicines.

4. The learned Principal Judge, Family Court after considering the pleadings of the parties and the evidences brought on record, directed the

petitioner to pay the maintenance as indicated above. Hence, this revision.

5. Learned counsel appearing for the petitioner assailing the order impugned as bad in law and perverse seriously contended that the court below

without following the mandates of sub-section (4) and (5) of Section 125 of the Code of Criminal Procedure (in short ""the Code"") passed the

order impugned though the complainant had herself deserted the company of this petitioner and is living separately. It was also contended that the

court below has not appreciated the evidence in right perspective and without deciding the ""sufficient means"" of the petitioner merely relying upon

the evidence on record and the fact that the petitioner is an M.B.B.S. Doctor, directed to pay a highly excessive amount as maintenance. It was

also submitted that a suit for dissolution of the marriage was filed with mutual consent of both parties but the same was subsequently dismissed as

the petitioner was not in a position to pay the exorbitant demand of permanent alimony of opposite party no.2. Hence, the order impugned

deserves to be set aside.

6. Learned counsel appearing for the opposite party no.2 refuting the submissions, submitted that the petition for dissolution of the marriage filed

with mutual consent would make no difference and the wife''s claim for maintenance under explanation (b) of Section 125 of the Code continues

unless the marriage is dissolved by a competent court but as the petitioner refused to pay any permanent alimony to the opposite party no.2, she

declined to dissolve the marriage. It was also submitted that the court below after interpreting the provisions of Section 125 of the Code in right

perspective and also considering that the provision is enacted for social justice and specially to protect women and children rightly directed the

petitioner to pay the maintenance. Lastly it was also submitted that the opposite party no.2 was subjected to physical and mental torture and that

was the reason for her withdrawal from the company of the petitioner and there is every apprehension that the moment she returns along with two

minor daughters to her matrimonial house, she would be subjected to physical harm.

7. After giving a thoughtful consideration of the rival submissions made by the counsels, the question, which has come up for consideration by this

Court, is as to whether the petitioner is capable of paying the maintenance amount granted by the court below and whether the opposite party no.2

is entitled to any maintenance in view of bar created under sub-section (4) of Section 125 of the Code.

8. I have examined the evidences available on record wherein the opposite party no.2- the wife has clearly testified that due to physical and mental

torture at the hands of the petitioner, she decided to live separately. The petitioner in his pleading as well as in his evidence has admitted the fact

that he has not given any maintenance to his wife and the two minor daughters. The petitioner has not brought on record any document to show his

monthly income and from the evidence available on record, it appears that the petitioner is an M.B.B.S. Doctor with post-graduate degree of

M.D. and attached with Sai Nursing Home and Research Centre, Dhanbad. Besides that in the year 2010, he had sold one of his property on a

consideration amount of Rs.36,00,000/-. In that circumstance, he cannot be said to be not competent to pay the maintenance to his wife and two

minor children. In view of Section 106 of the Evidence Act, burden was on the petitioner to prove the fact of his monthly income since it was

specially within his knowledge but intentionally he has not brought on record any evidence to show his monthly or annual income. So, the court

below has rightly recorded the finding that the petitioner has sufficient means and is capable to pay the maintenance. So far as the submission of the

learned counsel for the petitioner that the opposite party no.2- the wife had withdrawn the company of the petitioner on her own is concerned,

nothing has been brought on record that his wife had any extra marital relationship as alleged by the petitioner and because of that, she had

withdrawn herself from the conjugal life. Contrary to that, she has clearly testified in her evidence that after the birth of two daughters, she was

subjected to physical and mental torture, which finds corroboration from the evidence of P.W.2- the father also.

9. In connection with the submission of learned counsel for the petitioner that the amount of maintenance is highly excessive, I fill necessary to

advert to decision in Ekradeshwari v. Homeshwar reported in AIR 1929 P.C. 128 wherein the Hon"ble Privy Council while considering the

similar situation observed that maintenance depends upon a gathering together of all the facts and the situation, amount of free estate, the past life of

the married parties and the family, or reasonable view of change of circumstances, mode of living and the age, habits and wants and class of life of

the parties.

Admittedly, the petitioner being a doctor has a place in society and naturally, the mode of living and class of his life must have been above the living

standard of a common man. The family background of the petitioner appears to be sound enough studded with the fact that he had disposed of

one of his property in the year 2010 on a consideration amount of Rs.36,00,000/-. Secondly, he is an able bodied man and working with nursing

home. On the other hand, the opposite party no.2 along with her two minor daughters are dependent upon the old parents. In my opinion, in the

circumstances discussed above, the amount of maintenance awarded by the court below does not appear to be excessive, particularly in view of

the present inflationary trend and high price rise.

10. Having considered the above facts, it leaves no manner of doubt that the petitioner has not sufficient means to maintain his wife and two minor

daughters. Thus, in view of the above discussions, the amount of maintenance granted by the court below does not require any interference and the

opposite party no.2 certainly had just grounds not to live with her husband and there is no error or illegality pointed out by the petitioner so as to

interfere in the order impugned.

11. This revision application, being devoid of any merit, is, hereby, dismissed.