

(2006) 05 PAT CK 0032

Patna High Court

Case No: Criminal Revision No. 789 of 2005

Shail Singh

APPELLANT

Vs

State of Bihar and
Another

RESPONDENT

Date of Decision: May 2, 2006

Hon'ble Judges: Navin Sinha, J

Bench: Single Bench

Advocate: Jayanand, for the Appellant; S.K. No. II, for the Respondent

Judgement

Navin Sinha, J.

Heard learned Counsel for the petitioner and learned Counsel appearing on behalf of opposite party No. 2 who has entered appearance suo motu.

2. The petitioner who is the husband questioned the order dated 29.9.2005 in Maintenance Case No. 26 of 2005 passed by the Principal Judge, Family Court, East Champaran, Motihari filed by his first wife, the opposite party, for maintenance, awarding a sum of Rs. 1500/- each to opposite party No. 2 and to the daughter, namely, Rima Kumari till her majority.

3. The relevant facts necessary for the present consideration are that the petitioner was married to opposite party No. 2 in 1960. Four daughters were born out of the wedlock, three of whom are subsequently married. The petitioner during subsistence of his earlier marriage, remarried with another women in 1988 from which two sons and two daughters have been born.

4. Learned Counsel for the petitioner assailing the order sought to persuade this Court that it was not the case of opposite party that she was unable to maintain herself. She had admitted that the petitioner had purchased lands in her name. In her deposition she has stated that she will not like to live with the petitioner even if he persuaded her to live with him and thus it was she who refused to cohabit with him. During the pendency of previous dispute a compromise between the parties

had been arrived at.

5. Counsel for opposite party supports the order.

6. This Court finds that the court below on consideration of the materials and the evidence led before it has arrived at a finding that the lands purchased by the petitioner in the name of Opposite party No. 2 remained in his possession as deposed by his witnesses. The law itself provides that the refusal of Opp. Party No. 2 to cohabit with the petitioner in view of his second marriage was justified. The alleged compromise has been disbelieved after discussion of the evidence led with regard to the agreement in question and also deposed by the witnesses of the petitioner in this regard. The court below has rightly concluded that it was not satisfied that the typed compromise was a genuine document in absence of the original, that was hand written.

7. In view of the aforesaid discussion this Court finds it difficult to interfere with the order assailed to that extent.

8. This Court however, does notice that the petitioner has himself to maintain apart from his two wives, two sons, two daughters from the second wife and one unmarried daughter from the first wife. Thus a total of five children. The order of the court below does not reflect that either of the parties had placed materials before the court below with regard to the capacity of the petitioner to pay, based on which the court below had arrived at its satisfaction with regard to quantum of maintenance. In the facts and circumstances of the case, this Court, therefore without setting aside the order while upholding it on merit considers it proper to remand the matter to the court below to arrive at a fresh finding only with regard to quantum of maintenance, in view of the number of personalities dependent on the petitioner and coupled with his source of income and capacity for payment.

9. This Court, therefore, directs, and the counsel for the parties are agreed, that they shall appear before the court below within a period of three weeks from today along with a copy of this order. Both parties shall have adequate opportunity to place before the court below the financial condition of the petitioner and his capacity to pay and the need of the opposite party and her daughter and then arrive at a fresh finding with regard to the quantum of maintenance in accordance with law, within a period of two months from the date of such commencement of proceeding. The court below shall not grant unnecessary adjournments to the parties so that the proceeding be concluded expeditiously.

10. It is made clear that the court below shall arrive at its conclusion by independent application of mind based on materials that will be produced before him. The present order shall not be construed either as confirmation or rejection of the present quantum arrived at by the court below.

11. This application stands dismissed to the extent as indicated above but with the observations and directions as contained.