

Rajesh Kumar @ Rajesh Kumar Singh Vs. State of Bihar and anr.

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Court : Patna

Decided On : Sep-17-2001

Judge : P.K. Sinha, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 125(1) and 125(4)

Appeal No. : Cr. Misc. No. 19371 of 1997

Appellant : Rajesh Kumar @ Rajesh Kumar Singh

Respondent : State of Bihar and anr.

Advocate for Def. : Dinu Kumar and Raj Kumar, Advs. for Respondent No. 2

Advocate for Pet/Ap. : Raghubansh Pd. Singh and R.C.P. Bharti, Advs.

Disposition : Application dismissed

Judgement :

P.K. Sinha, J.

1. This is a petition under Section 482 of the Code of Criminal Procedure ('the Court', in short) preferred by Sri Rajesh Kumar @ Rajesh Kumar Singh praying therein for quashing the order dated 18.9.1996 passed by the learned Judicial Magistrate, 1st Class, Gaya in Miscellaneous Case No. 137 of 1994 corresponding to Trial No. 183 of 1996, which was a case under Section 125 of the Code in

which, under final order the learned Magistrate had allowed maintenance to Sangeeta Devi, opposite party No. 2, who had made the claim in the application in the lower Court, being wife of the present petitioner.

2. The facts, in brief, are that Sangeeta Devi, opposite party No. 2 had filed the aforesaid application alleging therein that her marriage with the present petitioner was performed in the year 1991 and after her 'Ruksadi' she was living with the petitioner but thereafter the petitioner and his family members dealt with the applicant/opposite party No. 2 with cruelty, even assaulting her and once she was also given poison so forcefully that as result her two frontal teeth had become defective but somehow she survived. She was sent back to her parents' house where she was living since 1992 after which her husband was refusing to maintain her.

3. In the show-cause the present petitioner in the lower Court admitted that the applicant/opposite party No. 2 was his legally wedded wife but after three months she deserted him and continued residing with her parents against the wishes of the present petitioner. It was also claimed that Sangeeta Devi was leading adulterous life in her parents' house which was her source of earning and her parents also benefited from such earning of Sangeeta Devi. It was also claimed by the husband that he was being forced to stay at his 'Sasural' with his wife. It was claimed that the petitioner was unemployed and he had no income to maintain the wife, but expressed his readiness to keep the wife with him.

4. In course of proceeding in the lower Court witnesses from both sides were examined and in the final order the learned Magistrate also recorded the facts which were admitted by both the parties such as that they were legally married and ultimately Sangeeta Devi was living with her parents. The learned Magistrate found that the applicant wife had proved her allegations whereas the husband could not prove his. Learned Magistrate also did not find that the wife was earning nor he agreed with the contention of the husband that he was unemployed on the basis of evidence of witnesses including of the Sub-Registrar of concerned Registration Office and came to the conclusion that the husband was working in the Sub-Registry Office in the name of his elder brother Rajesh Kumar and was

drawing a salary of Rs. 2,444/- per month. Learned Magistrate, finding that the husband had sufficient means but was neglecting to maintain his wife who was unable to maintain herself, allowed the application as aforesaid.

5. With regard to the claim of husband that he was ready to keep Sangeeta Devi with him as wife, the learned Magistrate also held that the wife had reasonable cause for not returning to her husband's home on the ground of ill-treatment to her.

6. In course of arguments, learned Counsel for the petitioner has argued that the petitioner was unemployed and, secondly, he was ready to keep opposite party No. 2, Sangeeta Devi with him as his wife.

7. From the impugned order of the learned lower Court it will appear that the witnesses of the applicant/opposite party No. 2 in this petition had supported her contentions including her 'Nanad', Reeta Devi, who was witness No. 2 who said that Sangeeta Devi had been neglected by the husband and that she had no means to maintain herself.

8. In her evidence the applicant Sangeeta Devi also supported her case including on the point of cruelty which she claimed her husband and his family members had inflicted upon her. Therefore, I have no doubt that the learned Magistrate has rightly come to the conclusion, after discussion of evidence of both sides, that the application of Sangeeta Devi was fit to be allowed so far her case of maintenance was concerned.

9. Learned Counsel while arguing on the point that the present petitioner was unemployed and unable to maintain his wife, submitted that if there was a finding that he was employed in another name in a Government office, then his salary in regard to maintenance might be attached. The tenor of argument was that the finding of the learned Magistrate was erroneous of the point that this petitioner was employed anywhere.

10. However, it is difficult to accept the argument that the finding of the learned Magistrate was erroneous in view of the facts that have been discussed in the order. Insofar as other point is concerned, if the amount of maintenance is not

paid, that would be considered by the learned Magistrate if an appropriate application is filed in that regard. However, a husband who is otherwise bound to maintain his wife cannot hide behind plea, of his unemployment. In any case such a husband must be maintaining himself with whatsoever means that may be at his command. If it is not shown that the husband was so physically or mentally handicapped that he was unable to maintain his wife or himself, this plea on behalf of the husband has to be discarded.

11. Insofar as the second contention of the learned Counsel that the husband was is ready to keep his wife with him, is concerned, allegation in the applicant under Section 125 of the Code was that she was forced to go away from husband's place in face of cruelty and assault meted out to her which also had damaged her two frontal teeth.

12. Under Sub-section (4) of Section 125 of the Code a wife would not be entitled to receive an allowance from her husband if she was living in adultery, or if, without sufficient reason she refuses to live with her husband or if they are living separately by mutual consent. The allegation that she was living in adultery obviously has not been found proved by the evidence and no flaw in the discussion of evidence on this point has been pointed. Simply saying that she was living in adultery cannot prove the allegation, but cogent and sufficient evidence must be brought on record to prove the plea of adultery of the spouse claiming maintenance. If that has not been proved by such evidence, that may be treated as another example of cruelty against the wife.

13. So far as refusal to live with the husband is concerned, I have already noted that the wife had claimed cruelty on the part of her husband and his family members, hence in such circumstance the husband can hardly be given benefit of the provision of Sub-section (4) of Section 125 of the Code particularly when he has made, unsuccessfully, insinuations against the moral character of his wife. The amount so granted for maintenance also appears to be reasonable keeping in view the present hard times.

14. In view of aforesaid, I find no merit in this application which is dismissed.