

Hari Rajwar Vs. State of Bihar

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Court : Patna

Decided On : Mar-20-1997

Judge : P.K. Sarin, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 397

Appeal No. : Criminal Revision No. 291 of 1990

Appellant : Hari Rajwar

Respondent : State of Bihar

Advocate for Def. : Abdul Hakoob, Sanjay Kumar Tiwary, Hakimuddin Shaikh and Madhuri, Advs.

Advocate for Pet/Ap. : Subro Sanyal, Adv.

Disposition : Application dismissed

Judgement :

P.K. Sarin, J.

1. This criminal revision application is directed against the judgment and order dated 4.12.1989 passed by the Sub-Divisional Judicial Magistrate, Pakur, in Cr. Misc. Case No. 6 of 1988 allowing the application of the opposite party No. 2 under Section 125 of the Code of Criminal Procedure and awarding maintenance

of Rs. 200/- per month from the date of filing of the application by the opposite party No. 2.

2. The undisputed facts are that opposite party No. 2 is the wife of the petitioner and that the petitioner has married a second wife. It is also not in dispute that opposite party No. 2 was not living with her husband when the application was filed.

3. Opposite Party No. 2 filed as application under Section 125 of the Code of Criminal Procedure alleging that till 1986 the petitioner and opposite party No. 2 led a happy conjugal life and two children were born out of whom only one survived. It was alleged that the petitioner started torturing the opposite party No. 2 mentally and physically before the filing of the application. The petitioner drove her from his house after assaulting her and also snatched away all the ornaments. It was further alleged that the petitioner married second wife.

4. The present petitioner in his show-cause alleged that the petitioner left his house voluntarily at the instance of her father and brother and did not come back although he had made attempts for the same. It was further alleged that there is custom of another marriage in his community and he has married second wife. It was also alleged that the petitioner is still ready to keep opposite party No. 2 with him.

5. Learned Magistrate after appraisal of evidence came to the conclusion that the petitioner has neglected to maintain opposite party No. 2 and opposite party No. 2 was justified in refusing to live with the petitioner.

6. Learned Magistrate further considered the means of the petitioner and awarded Rs. 200/- per month as maintenance amount against the petitioner in favour of opposite party No. 2 from the date of filing of the application.

7. Learned Counsel for the petitioner contended that according to the custom of the community of the parties, who are tribals, second marriage is permitted. It was further contended that opposite party No. 2 had herself deserted the petitioner and the petitioner is always ready to keep opposite party No. 2 with him and maintain

her.

8. Even if there be custom of second marriage in the community of the petitioner and opposite party No. 2 and that has been performed in accordance with the customary law but the fact remains that the second marriage has taken place and the first wife is justified in refusing to live with her husband who had taken second wife as living with second wife itself amounts to cruelty. Therefore, the question of validity of marriage is not relevant for the purposes of correct justification for separate living.

9. As regards, the question whether the petitioner failed or neglected to maintain opposite party No. 2, it has been observed by the learned Magistrate on appraisal of evidence that opposite party No. 2 was assaulted and driven out from the house by the present petitioner. As regards the matter of reappraisal of evidence, the revisional Court need not enter into reappraisal of evidence like Appellate Court to record different finding of fact. Learned Magistrate has also discussed the evidence regarding the means of the petitioner and awarded Rs. 200/- per month as maintenance. Learned Magistrate has also referred to the statement of the present petitioner wherein he had admitted four bighas of Dhani land and nine bighas of blith land. Therefore, awarding maintenance at the rate of Rs. 200/- per month cannot be said to be without evidence. Hence, the finding of the learned Magistrate cannot be said to be illegal. In my opinion, the judgment and order under revision does not suffer from any infirmity as to warrant any interference by this Court in exercise of its revisional jurisdiction.

10. This application is dismissed accordingly. The stay order stands vacated.

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