

Chandrakanta Sinha Vs. Arun Kumar Sinha

Chandrakanta Sinha Vs. Arun Kumar Sinha

SooperKanoon Citation : sooperkanoon.com/140677

Court : Patna

Decided On : Sep-14-1994

Judge : Amir Das, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125, 397 and 401

Appeal No. : Criminal Revision No. 142 of 1992

Appellant : Chandrakanta Sinha

Respondent : Arun Kumar Sinha

Advocate for Def. : Anant Prakash Sahay, Adv.

Advocate for Pet/Ap. : Awadhesh Kumar Singh, Adv.

Disposition : Revision allowed

Judgement :

Amir Das, J.

1. This revision-application under Sections 397 and 401 of the Code of Criminal Procedure Code is directed against the Order dated 23.4.1992 passed by Sri Ramanuj Sinha, Judicial Magistrate, 1st Class, Patna in Case No. 558(M)/1983 whereby the prayer for grant of maintenance has been refused.

2. The petitioner-wife made an application for grant of maintenance against her husband-Opposite Party claiming herself to be his legally married wife and on amongst other grounds. She has asserted that she was married with Opposite Party according to Hindu rites and customs on 4.7.1979 and thereafter, she was living with her husband. She gave birth to two sons-one on 5.12.80 and another 5.3.1982. These two sons are also petitioners and they are living with their mother. Sometime thereafter the Opposite Party started torturing and ill-treating her resultant she left her husband's house under compulsion. Neither the petitioner nor her children were maintained by the Opposite Party rather they were neglected to be maintained.

Consequently, she made an application of grant of maintenance on 26.9.1983. She has also claimed that her husband-Opposite Party is a Junior Engineer drawing a handsome salary and the petitioner has no source of her livelihood and as such she is not able to maintain herself and her children. The proceeding was contested by the Opposite Party-husband on two grounds, firstly that the petitioner-wife is a Lecturer and getting a salary sufficient for her maintenance and her children' maintenance and secondly that she is living in adultery.

However, Opposite Party-husband admitted the fact that the petitioner-wife is his legally married wife and two sons are his legitimate sons. Both the sides adduced evidence in support of their respective claims. After taking into consideration the evidence on the record, Judicial Magistrate recorded the finding that though the petitioner is legally married wife but she being employed as Lecturer and getting salary according to the statute of Magadh University she is not entitled for maintenance allowance. In second place he has also recorded the finding that second marriage of the Opposite Party-husband has not been satisfactorily proved.

3. On the aforesaid finding the learned Magistrate refused the prayer of the petitioner-wife and dismissed the application.

4. The learned Counsel appearing on behalf of the petitioner has challenged the correctness and legality of the finding recorded by learned Magistrate on the ground that learned Magistrate failed to give correct approach to the documents

filed by the petitioner resultant there is miscarriage of justice. He has referred all those documents which were relied upon by the petitioner as well as discussed by the learned Magistrate.

5. Since the petitioner has been accepted as legally married wife and sons have been accepted as legitimate sons, I do not find to deal this aspect of the matter any further. Firstly I will take up the allegation of re-marriage of the Opposite Party.

6. In this context besides oral evidence, there are some documents which are relevant to this case Annexure-4 corresponding to Ext. 6 is marriage certificate granted by Mahant of Sri Bari Patan Devi Mandir. In this annexure it has categorically been mentioned that one Renu Kumari, daughter of Kamla Prasad of Kurkuri, P.S. Phulwari Sharif, District Patna was married to Arun Kumar Sinha @ Munna, son of late Jogeshwar Prasad @ Bhuneshwar Prasad, Junior Engineer, Kankarbagh Block C-C-63. It further stands mentioned that the marriage was performed in a temple on 15.1.1988.

7. This document was discussed by the learned Magistrate but he appears to have failed to apply his mind into details of the fact incorporated therein. Munna Prasad is the @ name of Opposite Party Arun Kumar Sinha. His parentage and address are also there. Therefore, there is no difficulty in identifying that fellow. The learned Magistrate how misunderstood this aspect of the matter I fail to understand. In my view this is not the way of appreciation of documents. In my view this document satisfactorily proves the second marriage of the Opposite Party-husband with Renu Kumari in the manner and on the date as aforementioned.

8. The learned Magistrate also dealt with photograph which is Annexure-4/1. Regarding this photograph the learned Magistrate made no comment as to whether it is real photograph or trick photograph. Though this photograph could not be exhibited, I want to give referential value thereof. In this photograph Opposite Party Arun Kumar Sinha, Munna appears sitting with a lady wearing garland. Just below that photograph there is photograph of family members of the Opposite Party including newly married wife.

9. A man of common prudence cannot believe that this is a trick photograph. I, therefore, find that this photograph also supports the fact that a new lady has been introduced as family member in the family of the Opposite Party. In view of the above discussions, I come to the last conclusion that Opposite Party has really re-married with Renu Kumari.

10. Now I will take up as to whether the petitioner-wife is entitled for maintenance allowance. No doubt she has been appointed as lecturer in Reshma Devi Memorial Mahila College, Patna, but the fact that she is getting a prescribed salary as held by learned Magistrate is not true. The learned Court below has mainly replied upon appointment letter (Ext. 5) and discussed the provision of the statute of Magadh University providing salary to the Lecturer but without knowing actual state of affairs. The petitioner wife has been appointed as lecturer but on temporary basis.

11. Her appointment as lecturer and getting salary of a Lecturer was raised before this Court and for marshalling the fact, the report was called for from this Court. Principal of the College submitted its report dated 8.2.94 (Annexure-2). The Principal has reported that Smt. Chandra Kanta Sinha (the petitioner) is a Lecturer in his college and at present getting conveyance allowance only at the rate of Rs. 225 per month. He has further reported that college is no doubt affiliated but without finance, the institution is not getting (sic) salary to any of the teachers of the college including Smt. Chandra Kanta Sinha.

12. Therefore, the real affairs of the fact is this that save and except conveyance allowance the petitioner-wife is getting nothing from the college. The petitioner-wife herself admitted that though she is Lecturer in the said college but she is getting conveyance allowance at the rate Rs. 100/- per month only. Save and except conveyance allowance that too for the purpose for coming and going from the College, cannot be said to be salary on the amount sufficient for maintenance or for any other purposes. The learned Magistrate has also recorded the finding that she is getting remuneration in other educational institution but the above discussion, I, therefore, come to the conclusion that wife-petitioner is earning nothing to maintain herself and her children.

13. Since the husband-Opposite Party contracted re-marriage and second wife is living with them, it is risky for the petitioner and her children to live with that family. Both the sons are minor but they are leading their life without any blessing of their father. The petitioner himself is not capable to maintain them and to make them a good citizen, therefore, they urgently require for their maintenance.

14. Admittedly Opposite Party-husband was Junior Engineer at the time when marriage with the petitioner took place and now he is getting Rs. 5000/-per month. Having regard to this economic position of the Opposite Party, I find him capable to maintain his first wife and his two children.

15. Considering the facts from all corners, I come to the last conclusion that petitioner-wife and her two sons are entitled for their maintenance and, accordingly, they are allowed maintenance total at the rate of Rs. 1,500/- per month. I make it clear that each dependent will get Rs. 500/- per month for their maintenance from the Opposite Party from the date of filing application, i.e. 26.9.83.

16. In the result, this application in revision is allowed and the order passed by the learned Magistrate is hereby set-aside.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com