

Abinash Kumar Singh Vs. The State of Jharkhand and Ors

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Court : Jharkhand

Decided On : Feb-25-2015

Appellant : Abinash Kumar Singh

Respondent : The State of Jharkhand and Ors

Advocate for Pet/Ap. : Mr. K.P. Deo

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Revision No. 297 of 2014 Abinash Kumar Singh, S/o Shri Sita Ram Singh, R/o Patel Nagar, Chas, P.O & P.S.-Chas, Dist.-Bokaro (Jharkhand) Petitioner Versus 1.The State of Jharkhand 2. Samita Singh, W/o Abinash Kumar Singh, D/o Meghnath Singh 3. Deepsikha Kumari, D/o Abinash Kumar Singh, both R/o Qr. No. F-32, Tayo Colony, Gamaharia, P.O&P.S.-Gamaharia, Dist.-Saraikella-Kharsawan Opposite Parties ----- CORAM: HON'BLE MR. JUSTICE AMITAV K. GUPTA ----- For the Petitioner : Mr. K.P. Deo, Advocate For the State : A.P.P. For the O.P. No.2 : Mr. Mukesh Kumar, Advocate ----- 09/Dated:

25. 02/2015 This revision is directed against the order dated 12.02.2014 passed in Misc. Case No. 14 of 2011 (T.R. No. 228 of 2014) whereby the court below had directed the petitioner to pay maintenance amount @ Rs. 2,500/- to the O.P. No.2 and Rs. 3,500/- to the O.P. No.3.

2. Mr. K.P. Deo, learned counsel for the petitioner has contended that the trial court has fixed the quantum of maintenance without adjudicating the issue regarding the income of the petitioner. That the court below on the basis of conjecture has held that the petitioner is earning Rs.20,000/- by running a computer institute, whereas the O.P. No.2 in her deposition in the court below has admitted that she cannot adduce any document regarding the income of the petitioner from the computer institute, neither can she say whether the petitioner is an income tax payee. That it is evident from the salary statement obtained from the Jharkhand Sarb Siksha Abhiyan, that the salary of the petitioner is Rs. 11,034/- per month. It is urged that the court below should have considered the fact that this is a contractual job. It is urged that the petitioner is ready and willing to keep his wife i.e. O.P. No.2 and he had filed a suit for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 and suggestion was also given to O.P. No.2 in cross-examination but she has refused to reside with the petitioner. That in fact O.P. No.2 has been pressurizing the petitioner to leave his aged parent and reside with her at her father's house. It is urged that the petitioner has to pay the maintenance to his father who has filed a maintenance case against him. On the above grounds it is argued that the O.P. No.2 is not entitled to any maintenance in terms of Section 125(4) of the Cr.P.C. as she is residing separately without any sufficient cause that the impugned order has been passed without appreciating the material evidence on record and is not sustainable in law or on facts.

3. Learned counsel for the O.P. No.2 has submitted that as per the show cause, attached with the counter affidavit, it would be evident that the petitioner has admitted that he is eking out his livelihood by running a computer institute. That the salary statement of the petitioner at Annexure-C, shows that he is drawing a salary of Rs. 11,034/-. It is contended that O.P. No.2/wife had appeared in the suit for restitution of conjugal rights and a compromise was also filed whereafter she resided with the petitioner but she was again subjected to cruelty she was assaulted by the petitioner and his parents and ousted from the matrimonial home, due to which she filed a criminal case under Section 498 A of the I.P.C. It is urged that O.P. No.2 has sufficient cause to reside separately from the company of the petitioner/husband and the quantum of maintenance as has been assessed in

view of the admission in show cause by the petitioner that he is running a computer institute and draws a salary of Rs. 11,034/- per month. That the revision is fit to be dismissed.

4. Heard. Perused the impugned order. The contention of the learned counsel that O.P./wife has failed to prove the actual income of the petitioner is not acceptable because generally in our society the husband does not disclose the actual income to his wife neither is the wife expected to verify and question her husband regarding his actual income. It is evident that the wife has disclosed that the petitioner has income from the computer institute and this has been admitted by the petitioner in his show cause. Admittedly the petitioner is employed on contractual basis under the Sarb Siksha Abhyan and is drawing a salary of Rs. 11,034/- . That the petitioner has taken a plea that the computer institute has been closed and this was brought to the notice to the court below, which is evident from the deposition of the petitioner as pointed out by the learned counsel for the petitioner. From the evidence on record it is not denied that O.P. No.2's father had provided monetary help to the petitioner for opening the computer institute. This shows that the petitioner's pecuniary condition was not sound at that point of time and he had got the job on contractual basis later on. The fact regarding closure of computer institute has not been appreciated by the court below which has assessed the income of Rs. 20,000/- per month from the computer institute on the basis of statement of O.P./wife.

5. The plea has been taken by the learned counsel for the petitioner that he is ready and willing to keep the O.P. No.2 and he had also filed a suit for restitution of conjugal right. It is admitted by the O.P. No.2 that on the basis of compromise, in the said suit, she had gone and resided with the petitioner which is not denied by the petitioner. This shows that she was willing to lead her conjugal life with the petitioner. However O.P./wife has stated that she was again subjected to cruelty and harassment whereafter she was ousted from her matrimonial house accordingly she filed a case under Section 498 A of the I.P.C. There can be various grounds for living separately and not merely confined to the illustration in the explanation of the proviso. In the second provision of Section 125(3) it is stipulated that even if the husband is willing to keep his wife and she refuse to do

so the court can consider any of the grounds of refusal and make an order granting maintenance notwithstanding such an offer by the husband to keep and maintain her. Admittedly, criminal case has been filed which shows that the relationship has been strained despite the fact that earlier a compromise was arrived at in the matrimonial suit as discussed above. The factum of pendency of criminal case between the parties may be a reason for the O.P./wife to reside separately as she could be apprehensive of some physical harm and this is a just ground for her to reside separately.

6. As far as the quantum of maintenance amount is concerned as noticed, no evidence has been brought on record about the income of Rs. 20,000/- by the petitioner from the computer institute. It is admitted as per the salary slip that the petitioner is drawing salary of Rs. 11,034/- . Thus, in the attending facts and circumstances the quantum of maintenance is modified and the petitioner is directed to pay Rs.2,000/- per month to the wife and Rs. 2,500/- per month to the minor daughter from the date of order of the trial court 8. With the said modification in the quantum of maintenance amount the revision is hereby dismissed. (Amitav K. Gupta, J.) Satayendra/

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