

Rajesh Kumar Vs. State of Jharkhand and Anr

Rajesh Kumar Vs. State of Jharkhand and Anr

SooperKanoon Citation : sooperkanoon.com/48993

Court : Jharkhand

Decided On : Feb-24-2015

Appellant : Rajesh Kumar

Respondent : State of Jharkhand and Anr

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Revision. No.770 of 2009 Rajesh Kumar S/o Sri Bharosa Sao R/o Village - Mayapur, P.O. & P.S. - Rehla, District - Palamau . Petitioner Versus 1. State of Jharkhand 2. Punam Devi D/o Ram Lal Sao, W/o Sri Rajesh Kumar, R/O Village - Kathondha, P.O. - Leshliganj, District - Palamau Opposite Parties ----- CORAM: HON'BLE MR. JUSTICE AMITAV K. GUPTA ----- For the Petitioner : None For the State : A.P.P For O.P. No.02 : Mr. Tarun Kumar, Advocate ----- 09/Dated:

24. In February, 2015 This revision is directed against the order dated 28.07.2009 passed by the learned Principal Judge, Family Court, Palamau, Daltongaj in Miscellaneous Case No.51 of 2004 whereby the petitioner was directed to pay maintenance amount of Rs.800/- per month to O.P. No.02.

2. None appears on behalf of the petitioner on repeated calls. However, Mr. Tarun Kumar, learned counsel, for O.P. No.02 and learned A.P.P are in attendance.

3. It transpires from the record that on 28.01.2015 none had appeared on behalf of the petitioner to prosecute the case thereafter on 18.02.2015 it was observed that

if the case is not prosecuted on the next date, no adjournment shall be given and the case shall be disposed of as per materials on record.

4. The grounds for preferring the revision application, as made out in the application, is that O.P. No.02 has failed to prove the second marriage of the petitioner with Prabha Devi. That P.W. - 4, Ram Lal Sao, the father of O.P. No.02 has stated in cross-examination that on 02.03.2003 his daughter, O.P. No.02 had came with him from the home of the petitioner which shows that O.P. No.02 has on her own - 02 - accord left the matrimonial house. That a panchayati was held on 02.03.2003 and the parties had agreed for dissolution of marriage and O.P.Ws. - 1, 2 & 3 have supported this fact. The above material facts show that she is not entitled to maintenance in terms of Section 125(4) of the Cr.P.C. That O.P. No.02 has examined herself as P.W. - 1 and she has admitted that she works as labourer and her husband/ this petitioner had taken away Rs.10,000/- which was her hard earned money, which shows that she is able to maintain herself. That O.P. No.02 has not filed any document to show that the petitioner has landed property. That the court below has not appreciated the material facts and passed the impugned order fixing the maintenance amount as Rs.800/- per month which is exorbitant considering the fact that the petitioner is a casual labourer having no fixed source of income. That O.P. No.02 is residing separately without sufficient cause hence she is not entitled to any maintenance.

5. Mr. Tarun Kumar, learned counsel, for O.P. No.02, has submitted that the court below has discussed and considered the evidences adduced by the parties. That the petitioner has taken specific plea that O.P. No.02 does not want to reside with him, as per Exbt. - 3. The trial court has disbelieved the testimony of O.P.Ws. - 1, 2 & 3 that O.P. No.02 has on her own accord left the company of the petitioner. There is evidence on record to show that the petitioner has solemnized second marriage with one Prabha Devi and out of the said wedlock he has a son. That P.Ws. - 1 & 2 has also supported the factum of second marriage. The court below has discussed the evidence that the petitioner had kept Prabha Devi in his house due to which O.P. No.02 has been forced to reside in her parental home. That the court below has held that the petitioner works as a mason and as a casual labourer he may be earning Rs.70/- per day accordingly the quantum of

maintenance of Rs.800/- is neither exorbitant nor excessive.

6. Heard. Perused the impugned order. The court below has discussed the evidence of O.P. No.02, who has been - 03 - examined as P.W. - 1, Nand Kumar Yadav, P.W. - 2, Sakendra Singh, P.W. -3 and Ram Lal Sao, P.W. - 4. That the petitioner has solemnized a second marriage, as per evidence of O.P. No.02 and the same has been supported by the witnesses namely, P.Ws. - 2, 3 & 4. Moreover O.P.W. - 3, Basudeo Mistri, one of the panches of the panchayati, in which the document i.e. Exbt. - 3 was prepared, has admitted in para - 4 that the petitioner has contracted a second marriage with Prabha Devi. The fact that the petitioner has solemnized a second marriage is a just ground for O.P. No.02 to reside separately.

7. The court below has disbelieved the testimony of O.P. No.02 and the witnesses that the petitioner is man of means and is having immoveable and moveable property and his monthly income is Rs.10,000/- rather it has held that petitioner is a mason and earns Rs.70/- per day. The petitioner is a skilled labourer and the court below has rightly held that he is capable of earning minimum of Rs.70/- per day. The petitioner as a husband has a moral and social obligation to provide for the maintenance of his wife. There is no evidence that O.P. No.02 has sufficient means of income to maintain herself. On the other hand as noticed the petitioner is enjoying marital life with his second wife and has not cared to provide any expenses for the food, clothing, shelter, etc. to O.P. NO.02.

8. Admittedly the petitioner has not paid any maintenance amount since the passing of the impugned order. The act and conduct of the petitioner indicates that he has deliberately neglected and refused to maintain O.P. No.02 i.e. his first wife thereby shirking his moral and social obligation by not paying any maintenance to O.P. No.02.

9. In the backdrop of the discussions made above the order granting maintenance of Rs.800/- per month to O.P. No.02 does not merit any interference by this Court. Accordingly, the revision is, hereby, dismissed. (AMITAV K. GUPTA, J.)
Chandan/-