

Javed Vs. State of Uttaranchal and ors.

Javed Vs. State of Uttaranchal and ors.

SooperKanoon Citation : sooperkanoon.com/514521

Court : Uttaranchal

Decided On : Oct-12-2007

Reported in : I(2008)DMC271

Judge : Dharam Veer, J.

Appellant : Javed

Respondent : State of Uttaranchal and ors.

Advocate for Def. : Mr. Pankaj Miglani

Advocate for Pet/Ap. : Mr. Manish Arora

Judgement :

Dharam Veer, J.

1. By means of this writ petition, the petitioner has prayed to issue writ of certiorari quashing the order dated 24.5.2005 passed by respondent No. 2, Presiding Officer, Family Court, Haridwar in Misc. Case No. 61 of 2005, Smt. Parveen Rao v. Javed which is contained in Annexure No. 6 to the writ petition.

2. Briefly stated, facts of the case are that respondent No. 3-Smt. Parveen Rao moved an application under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.) with the allegations that she got married with the petitioner six years back and her parents spent Rs. 4.00 lacs in dowry. It

was alleged that the husband of respondent No. 3 was of greedy nature and after some time of marriage, her husband and her in-laws started beating her and also started to demand Rs. 50,000 in dowry for doing a shop of general store. The father of respondent No. 3 gave Rs. 10,000 and thereafter Rs. 15,000 in dowry however their demands could not be fulfilled and they continued to harass her, On 19.1.2004, petitioner and his family members tried to burn respondent No. 3 and also destroyed her articles but somehow she could managed to escape from them and then she came to her parental house at Salempur. It was also stated that she was not having any source of income and also did not know any work and is only Class IV passed, however the petitioner was earning Rs. 20,000 per month from the general store and dairy work. Thereafter, the petitioner also filed his objection on the application under Section 125, Cr.P.C. moved by respondent No. 3 and stated that she has no right to get the maintenance, as he has given divorce to her and he was having no relations with respondent No. 3. It was also stated that respondent No. 3 was a graduate and was taking tuitions and earning Rs. 6,000 per month. The learned Presiding Officer, Family Court, Haridwar vide his order dated 24.5.2005 after hearing Learned Counsel for the parties and appreciating the material available on record, allowed the application of the respondent No. 3 on the amount of Rs. 2,000 per month against the petitioner. Feeling aggrieved, the petitioner has filed the present writ petition before this Court.

3. I have heard Mr. Manish Arora, Learned Counsel for the petitioner, Mr. Nandan Arya, learned AGA for the State/respondent Nos. 1 and 2 and Mr. Pankaj Miglani, Learned Counsel for respondent No. 3 and also perused the order dated 24.5.2005 as well as the entire material available on record.

4. Learned Counsel for the petitioner submitted that the petitioner is an unemployed person and is not having any source of income and the fact that he is earning Rs. 20,000 per month is baseless and without any evidence. Hence, he submitted that the amount of interim maintenance is on the higher side. On the other hand, Learned Counsel for respondent No. 3 submitted that she is a Class IV passed lady and is having no source of income and also she is living separately. He also denied the fact that respondent No. 3 is earning Rs. 6,000 per month and also submitted that the same is baseless and without any evidence and

the interim maintenance of Rs. 2,000 is a meagre one.

5. There is no documentary evidence on record which may prove the monthly income of the petitioner. Now-a-days, an ordinary labourer who works on daily wage basis, earns about Rs. 150 per day and in any case the monthly income of a labourer cannot be less than Rs. 4,000 per month and looking into the entire facts and circumstances of the instant case, it cannot be said that the petitioner would be earning less than Rs. 4,000 per month. After considering the entire facts and circumstances of the case, this Court is of the view that it would be justified in the interest of justice if the amount of interim maintenance be given to respondent No. 3 by the petitioner for Rs. 1,500 per month.

6. In view of the above, the petition is partly allowed. The order dated 24.5.2005 passed by Presiding Officer, Family Court, Haridwar is modified to the extent that the respondent No. 3 shall be entitled for interim maintenance for Rs. 1,500 per month (Rupees one thousand five hundred only) which shall be paid by the petitioner by the 10th of each month. Interim order dated 18.6.2005 stands vacated.