

Smt. Pokhani Devi and ors. Vs. State of Jharkhand and anr.

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SooperKanoon Citation : sooperkanoon.com/520552

Court : Jharkhand

Decided On : Sep-03-2004

Reported in : I(2005)DMC521; [2004(4)JCR492b(Jhr)]

Judge : M.Y. Eqbal, J.

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

Appeal No. : Cri. Revision No. 437 of 2003

Appellant : Smt. Pokhani Devi and ors.

Respondent : State of Jharkhand and anr.

Advocate for Def. : R.S. Mazumdar and; J. Mazumdar, Advs.

Advocate for Pet/Ap. : Sanjay Prasad, Adv.

Disposition : Revision application allowed

Judgement :

ORDER

M.Y. Eqbal, J.

1. Heard Mr. Sanjay Prasad, learned counsel for the petitioners and Mr. R.S. Mazumdar. learned counsel for the opposite parties.

2. This revision application is directed against the order dated 20.2.2003 passed by Principal Judge, Family Court, Dhanbad in M.P. Case No. 83 of 2002 whereby he has dismissed the application filed by the petitioners claiming maintenance under Section 125 of the Code of Criminal Procedure.

3. The facts of the case is that petitioner No. 1 was married with opposite party No. 2 about 35 years back and were blessed with two sons and two daughters. In 1997 the opposite Party No. 2 married second wife and left the house. Petitioner No. 1 alleged that two daughters although married have been living with her and could not sent to their sasural. The opposite party appeared and filed show-cause denying all the allegations and stated that petitioners have been residing in his house and they are looking after all the agricultural land and appropriating the income. The Court below considering the evidence adduced from the side of the petitioners came to the conclusion that sons are major and the daughters have already married and petitioner No. 1 and his major sons are residing in the house of the opposite party and they are managing agricultural land. Petitioners therefore failed to establish that without any reasonable excuse the opposite party refused to maintain the petitioners. Accordingly application was dismissed.

4. From perusal of the lower Court record, it appears that petitioner No. 1 examined herself as witness and admitted that she has been living in sasural. Other petitioners who are the sons and daughters have not been examined as witnesses. Other witnesses examined on behalf of the petitioners have stated that both the petitioner No. 1 and opposite party are living separately because of the second marriage conducted by the opposite party.

5. In the application filed under Section 125, Cr PC petitioner No. 1 has categorically stated that financial condition of the petitioners is very poor and she is not able to maintain herself and her family members. It is worth to notice here that although opposite party filed his show-cause but neither he has examined himself as witness nor examined any other witness in support of his case. There is no evidence from the side of the opposite party that petitioners particularly petitioner No. 1 wife has sufficient means to maintain herself. It has come in the evidence that sons are major and they are looking after the agricultural land and

the daughters have been married. There is no evidence that petitioner No. 1 has been getting sufficient fund to maintain herself.

6. Maintenance means shelter, food, medicine and other means of life. Thus to deny maintenance to the wife only on the ground that she is earning meagre amount for livelihood is wholly irrelevant. The object of Section 125, Cr PC is to see that husband is made to comply his obligation to maintain his wife and children. Even if claim of the children who are major and married cannot be entertained but in absence of evidence from the side of the opposite party the claim of maintenance by the petitioner No. 1 who is legally married wife cannot be thrown out. The matter therefore, needs reconsideration by the Court below.

7. For the aforesaid reasons, this revision application is allowed and the impugned order is set aside. The matter is, therefore, remanded back to the Principal Judge, Family Court, Dhanband to pass fresh order after giving opportunity of hearing to the parties. The Court shall record a finding as to whether the petitioners are entitled to be maintained and if so what should be the quantum of maintenance.