

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. No.178 of 2016

Dukhi Ram Mandal, Son of Sri Panchanan Mandal, resident of Vill.-Dhaiya, Kumar Tola, Bartanda,P.O. & P.S-Dhanbad, District-Dhanbad, Jharkhand
..... Petitioner

-Versus-

1. The State of Jharkhand
2. Smt. Pratima Mandal, daughter of Sri Ashok Kumar Mandal, resident of Upper Candra Basti, P.O-Motinagar, P.S-Sindri, District-Dhanbad(Jharkhand)
.....Opposite Parties

CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR

For the Petitioner : Mr. Nitin Kumar Pasari, Advocate
For the State : Mr. Ashok Kumar, APP

(Through V.C.)

05/07.07.2020

The husband has challenged the Judgment dated 05.02.2016 passed in Maintenance Petition No.88 of 2014 by which he has been directed to pay Rs.8,000/- per month to his wife and Rs.1,000/- per month to his son for their maintenance, besides Rs.5,000/- in lump-sum as litigation cost.

2. Mr. Nitin Kumar Pasari, the learned counsel for the petitioner submits that the order of maintenance has been passed ignoring the salary-certificate of the petitioner which would disclose that net payable salary to the petitioner is about Rs.24,000/- only however quantum of maintenance has been fixed on the basis of monthly income of the petitioner at Rs.45,000/-.

3. In the first place, it needs to be indicated that the salary-certificate of the petitioner produced in the present proceeding was not tendered in evidence and the petitioner has not examined any person of Northern Railway who may be acquainted of his salary and income. The Station Superintendent, Kiratpur Sahib who has issued salary-certificate dated 18.06.2015, a copy of which has been filed in the present proceeding, has not been examined by the petitioner in the maintenance case.

4. The wife of the petitioner has stated that her marriage was solemnized with the petitioner on 13.05.2007 and from the wedlock a son was born. The petitioner and his family

members tortured her in connection to demand of Rs.4 lacs and she was ousted from her matrimonial home on 28.12. 2013. She has no independent source of income and her husband has neglected to maintain her and the minor son.

5. In the proceeding of Maintenance Petition No.88 of 2014 the petitioner and his wife both have examined themselves. There is reference of a criminal case filed against the petitioner under section 498A I.P.C. The petitioner has not denied his employment under the Northern Railway and he has not tendered in evidence his salary-slip. His wife has claimed that his monthly income is Rs.45,000/- and he has agricultural income of Rs.5 lacs per year and Rs.10,000/- per month from business.

6. Under section 125 of the Code of Criminal Procedure, a wife, minor child and parents are entitled for maintenance. The object behind section 125 of the Code of Criminal Procedure is to ensure that a wife, minor child and the parents do not suffer in destitution. The necessary conditions under section 125 of the Code of Criminal Procedure are that: (i) the husband has sufficient means still he has neglected to maintain his wife and/or minor child, and (ii) the wife is unable to maintain herself. In "*Capt. Ramesh Chander Kaushal v. Veena Kaushal*" reported in (1978) 4 SCC 70, the Hon'ble Supreme Court has held as under:

"9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfill. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social 4 relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advance the cause — the cause of the derelicts".

7. The petitioner has sufficient income to maintain himself, his wife and the minor son still he has neglected to maintain them and he has failed to demonstrate that the stand of his wife that she is unable to maintain herself and the minor son is not true. The wife of the petitioner is entitled for a reasonable amount to maintain herself and the minor son.

In "*Shamima Farooqui Vs. Shahid Khan*" reported in (2015) 5 SCC 705, the Hon'ble Supreme Court has observed that wife is entitled to lead a life in similar manner in which she would have lived in the house of her husband. In my opinion, even considering salary of the petitioner at about Rs.24,000/-, the maintenance of Rs.9,000/- awarded by the learned Family Court Judge as monthly allowance to his wife and minor son is not excessive, rather it is, just, proper and reasonable.

8. In view of the aforesaid discussions, I am not inclined to interfere in this matter and, accordingly, Criminal Revision No.178 of 2016 is dismissed.

(Shree Chandrashekhar, J.)

sudhir