

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Rev. No.238 of 2016

Afroj Ansari S/o Sahban Ansari R/o Village-Pakario, P.O-Pakario,
P.S-Chanho, District-Ranchi (Jharkhand) Petitioner
-Versus-

1. State of Jharkhand
2. Yasmin Ara W/o Afroj Ansari D/o Abdul Gaffar R/o Village-Balsokra, P.O-Pandri, P.S-Chanho, Distt.- Ranchi
.....Opposite Parties

CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR

For the Petitioner : Mr. Anil Kumar Sinha, Advocate
For O.P : Mr. Pandey Neeraj Rai, Advocate

(Through V.C.)

06/07.07.2020

The petitioner who is the husband of O.P No.2 has challenged the Judgment dated 18.01.2016 passed in Original Maintenance No.119 of 2012.

2. The learned Principal Judge, Family Court, Ranchi has awarded Rs.4,000/- per month to the petitioner's wife and Rs.2,000/- each per month to three minor children, cumulatively Rs.10,000/- per month, for their maintenance from the date of institution of the case.

3. Sub-section 2 to section 125 of the Code of Criminal Procedure provides that maintenance or interim maintenance and expenses for the proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance. A bare reading of sub-section would reveal that maintenance may be payable from the date of the order or it can be ordered from the date of the application. In "*Shail Kumari Devi Vs. Krishan Bhagwan Pathak*" reported in (2008) 9 SCC 632, the Hon'ble Supreme Court has observed that it is open to the Magistrate to award maintenance from the date of the application. The Hon'ble Supreme Court has observed thus;

"42.....It is, therefore, open to the Magistrate to award maintenance from the date of application and there is nothing which requires recording of "special reasons" though he must record reasons as envisaged by sub-section (6) of Section 354 of the Code in support of the order passed by him."

4. In "*Jaiminiben Hirenbai Vyas and Anr. Vs. Hirenbai Rameshchandra Vyas & Anr.*" reported in 2015 (2) SCC 385, the Hon'ble Supreme Court has observed that

section 125 of the Code of Criminal Procedure expressly enables the court to grant maintenance from the date of the order or from the date of the application.

5. In the proceeding of Original Maintenance Case No.119 of 2012, the wife of the petitioner who along with her minor children were the applicants, has examined 4 witnesses and the petitioner who was the opposite party has also examined 2 witnesses. The wife of the petitioner has stated that her marriage was solemnized with him on 12.08.2002 according to 'Hanafi School of Mohammedan Law' and in the marriage her father and relatives have given gold and silver ornaments of about Rs.5 lacs. From the wedlock three children were born. Her husband has abused her, demanded Rs.2 lacs and subjected her to cruelty. She has asserted that her husband has solemnized second marriage with Afsari Khatoon. On 23.11.2011 her husband was called at Anjuman Islahul Muslemin, Balsokra and he agreed to keep the applicant and her child but in the month of March, 2012 he brutally assaulted her and tried to kill her. Somehow she could escape from her matrimonial home with her minor children and since then she is staying with her father. The matter was reported to "Mahila Police Station", still her husband has refused to maintain them. She has stated that her husband is engaged in truck business and his monthly income is Rs.60,000/-.

6. The petitioner has however denied the allegation of torture and demand of dowry. He has stated that his wife is otherwise his near relative (*Phupheri* sister). He has given Rs.1,65,000/- to his wife for business however she transferred the entire amount to her father and she has lodged Chanhoo P.S Case No.82 of 2012 against him at the instigation of her father. He has stated that his wife has left his company on her own volition and staying at her parents' place without sufficient reasons and therefore she is not entitled for maintenance.

7. The proceeding under section 125 of the Code of Criminal Procedure is summary in nature and as held by the Hon'ble Supreme Court in "*Rajathi Vs. C. Ganesan*" reported in (1999) 6 SCC 326, section 125 of the Code of Criminal Procedure is enacted on the premise that it is the obligation of the husband to maintain his wife, children and parents and it would be for him to show that he has no sufficient means to

discharge his obligation and that he did not neglect or refuse to maintain them or any one of them.

8. The witnesses examined on behalf of the wife of the petitioner have supported her claim for maintenance. They have stated about business of the petitioner, demand of dowry, harassment and torture to his wife and his second marriage. They have also spoken about *Panchayati* in the village in which the petitioner was present. The petitioner who has examined himself as O.P.W No.2 has admitted in his cross-examination that he has married Afsari Khatoon and he has dairy business. His uncle who was examined as O.P.W No.1 has stated that a criminal case was lodged against the petitioner when he demanded Rs.1,65,000/- from his wife which was misappropriated by father of the petitioner's wife.

9. From the materials brought on record, I find that the wife of the petitioner has reasonable excuse not to live in his company and he has neglected to maintain his wife and the minor children. The petitioner has failed to demonstrate that he has no sufficient income whereas his wife is capable to maintain herself and the minor child.

10. The object behind section 125 of the Code of Criminal Procedure is to ensure that a wife, minor children or helpless parents do not suffer in penury. 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."

11. In view of the aforesaid discussions and the law on the subject, as it stand today, I am not inclined to interfere in this matter and, accordingly, Criminal Revision No.238 of 2016 is dismissed.

(Shree Chandrashekhar, J.)