

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4582 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- BHAGALPUR

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Sandeep Kumar @ Sandeep Kumar Thakur son of Umakant Thakur, resident of village - Sahabad, P.O - Gangapur, P.S- Sultanganj, District - Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Sanju Kumari wife of Sandeep Kumar Thakur, daughter of Gaya Prasad Choudhary, resident of Mohalla - Tej Pratap Nagar, P.S- Beur , District - Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar Das, Advocate
For Opposite Party No.2 : Mr. Ashok Kumar, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 08-04-2016

Heard learned counsel for the petitioner and learned counsel for the State.

2. By way of the present application preferred under Section 482 of the Code of Criminal Procedure (for short “CrPC”), the petitioner has sought for quashing of the order dated 3.1.2015 passed by the learned Additional Principal Judge, Family Court, Patna in Maintenance Case No.36M of 2011 whereby the application filed by the petitioner dated 20.9.2014 under sub-section (5) of Section 125 of the CrPC to cancel the order dated 2.9.2014 passed in the said case has been rejected.

3. The facts of the case in brief are that the opposite party

no.2 had filed Maintenance Case No. 36M of 2011 in the court of Principal Judge, Family Court, Patna seeking maintenance allowance of Rs.5,000/- per month for herself, Rs.5,000/- per month for maintenance of her two children and Rs.20,000/- as cost of litigation on the following grounds :-

- (i) That she is legally married wife of the petitioner and is blessed with two minor children;
- (ii) That soon after the marriage she was being subjected to cruelty by the husband and in-laws for non-fulfilment of dowry;
- (iii) That due to ill behaviour and torture, she was forced to leave her *Sasural* and is living in her *Naihar*;
- (iv) That the petitioner solemnized marriage with another lady, namely, Rinku Kumari and out of said wedlock a child is born;
- (v) That she is unable to maintain herself. She herself and her two minor children are dependent on her father, who is himself extremely poor;
- (vi) That her husband has two shops at Sultanganj and landed property at his native village Sahabad, P.S.-Sultanganj, District-Bhagalpur. He has annual income of approximately rupees five lacs.

4. Upon receipt of the notice in the aforesaid maintenance case, the petitioner filed a rejoinder and denied and controverted the allegations stating *inter alia* as under :-

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- (i) That neither he nor his parents misbehaved or tortured the opposite party no.2 at any point of time nor he has solemnized marriage with Rinku Kumari. The opposite party no.2 left her Sasural voluntarily without his consent and knowledge and refused to live with him only to extort money from him and his parents;
 - (ii) That he is unemployed and the opposite party no.2 is earning Rs.10,000/- per month as she works in Project Mahila Udyog and she is able to maintain herself;
 - (iii) That he has no commercial shop at Sultanganj nor any landed property at his village Shahabad and has got no personal income;
 - (iv) That the opposite party no.2 is not entitled to claim maintenance.

5. While the matter was being enquired into, the opposite party no.2 produced two witnesses in support of her case and during the pendency of the case she also filed a petition on 15.3.2013 seeking interim maintenance on the ground stated in the main petition adding and altering some new grounds, which are as under:

- (i) That both the minor children being ten years and eight years old are studying in Rising Sun Academy School, Patna;
- (ii) That the petitioner is working in Bata Company, Mokama with a salary of Rs.18,000/- per month and he has also landed property at village

Shahabad, from which he is getting rupees five lakh annually;

(iii) That apart from this, he is getting Rs.20,000/- per month from commercial building situated at Sultanganj.

6. The petitioner filed a rejoinder to the said petition dated 15th March, 2013 and denied the averments made thereunder.

7. The court below having considered the materials available on record and after hearing the parties reached at a conclusion that the opposite party no.2 has reason to live separately and petitioner being husband is not disclosing his correct income and allowed the application keeping in view the high price of essential commodities and other articles and geometrical progression in it. It awarded rupees four thousand for wife and rupees two thousand for each children per month towards maintenance allowance after taking into account the income of the petitioner. It also allowed a lump sum amount of rupees five thousand towards cost of litigation.

8. Being dissatisfied with the aforesaid order dated 2.9.2014, the petitioner filed an application under Section 125(5) of the CrPC on 20.9.2014 with a prayer to cancel the same.

9. The plea of the petitioner for cancellation of the aforesaid order 2.9.2014 was mainly based on the fact that the opposite party no.2 is a working lady and is earning Rs.10,000/- per month and she

is not entitled for maintenance. The opposite party no.2 denied the contention of the petitioner and her plea was that she has no source of income and she is totally dependent upon father and others.

10. Having considered the rival submissions made by the parties, the learned Additional Principal Judge, Family Court, Patna rejected the application vide order dated 3.1.2015 observing as under:

“From perusal of the case-record it is evident that there is nothing on the record to show that the petitioner is in service and it is well settled principle that the wife should be in a position to maintain standard of living which is neither luxurious nor penurious but what is consistent with the status of the family of husband the “expression unable to maintain herself” does not mean that the wife must be absolutely destitute before she can apply for maintenance U/S 125 Cr.P.C.

In my opinion the petition of the respondent is not maintainable and other matter has already been discussed in the order dated 02.09.2014 passed by this Court. In the aforesaid circumstances the prayer of the respondent U/S 125(5) Cr.P.C. is hereby rejected. Respondent is directed to pay interim maintenance as per direction given in the order dated 02.09.2014. This order will be deemed as the part of the order dated 02.09.2014 passed by this Court.”



11. Challenging the aforesaid order date 3.1.2015, learned counsel for the petitioner has contended that the learned Additional Principal Judge, Family Court, Patna failed to appreciate the provision of law laid down under sub section (5) of Section 125 CrPC which clearly disentitles a wife to get maintenance in case she is able to maintain herself. He has further contended that the opposite party no.2 has wilfully deserted the petitioner and there is no truth behind the allegation of subjecting her to cruelty for non-fulfillment of dowry.

12. Learned counsel for the State has contended that the order passed by the court below is reasoned one and there was no legal ground on the basis of which the interim maintenance allowed in favour of wife and children could have been revoked.

13. I have heard respective learned counsel for the parties and perused the materials available on record.

14. Section 125 CrPC reads as follows:-

“125. Order for maintenance of wives, children and parents.-(1) *If any person having sufficient means neglects or refuses to maintain –*

- (a) his wife unable to maintain herself, or*
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*
- (c) his legitimate or illegitimate child (not being a*

married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate think fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the

monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of service of notice of the application to such person.

Explanation.- For the purpose of this chapter,-

- (a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;*
- (b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.*
- (2) Any such allowance for the maintenance or interim maintenance and expenses of 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 and expenses of proceeding, as the case may be.*
- (3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month’s allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to*

imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living

separately by mutual consent, the Magistrate shall cancel the order.”



15. A perusal of the aforesaid provision would make it evident that Clause (1) of Section 125 CrPC vests jurisdiction in a court to order for maintenance of wife, minor child as also father and mother, who are unable to maintain themselves, if any person having sufficient means neglects or refuses to maintain them. The object of the maintenance proceeding is to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support.

16. Clause (2) of Section 125 of the CrPC confers power upon the court to allow maintenance or interim maintenance and expenses of proceeding from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding.

17. Be it noted that the application for consideration before the court below in the present case was under sub-section (5) of Section 125 CrPC. Sub section (5) of Section 125 CrPC gives jurisdiction to the court to cancel the order granting maintenance on proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by

mutual consent.

18. Apparently, the case of the petitioner is not that his wife was either living in adultery or that without any sufficient reason she refused to live with her husband or that she was living separately by mutual consent. Since none of the conditions prescribed under Clause (5) of Section 125 CrPC was attracted, the court below has rightly rejected the application of the petitioner vide impugned order dated 3.1.2015.

19. Accordingly, the application, being devoid of any merit, is hereby dismissed.

(Ashwani Kumar Singh, J)

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