

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 6098 of 2015

Arising Out of Maintenance Case No.-162 Year-2011 Thana-Udwant Nagar District- Bhojpur

Rana Pratap Singh @ Rana Pratap Son of Jagdish Singh, resident of Village-
Udwant Nagar, P.S.- Udwant Nagar, District- Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rina Kumari Wife of Rana Pratap Singh Daughter Amarjit Singh, resident of
Village and P.O.- Karisath, P.S.- Udwant Nagar, District- Bhojpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Pramod Mishra and Mr. Suraj Kumar, Advocates
For the Opposite Party No. 2	:	Mr. Ajay Kumar Singh and Mr. Raju Kumar Singh, Advocates
For the State	:	Mr. Vinod Shanker Modi, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 16-05-2019

Heard learned counsel for the petitioner; learned APP
for the State and learned counsel for the opposite party no. 2.

2. The petitioner has moved the Court under Section
482 of the Code of Criminal Procedure, 1973 (hereinafter referred
to as the ‘Code’) for the following relief:

*“That this quashing application is being
filed against the order dated 25.9.13 passed by the
learned court of Principal Judge, Family Court
Ara, Bhojpur in connection with Maintenance case
no. 162/11 whereby and where under the petitioner
is directed to pay twenty five hundred rupees per
month from the date of filing of the petition without
considering the facts that both the parties have
mutually divorced and living separately.”*



3. The petitioner was married to the opposite party no. 2 in the year 2002. However, the parties took divorce by mutual consent on 17.07.2010 and thereafter, the present Miscellaneous case has been filed on 25.10.2011.

4. Earlier the Court had adjourned the matter on the stand taken by learned counsel or the petitioner that he would take instructions with regard to whether the petitioner is agreeable to a One Time Settlement and the amount thereof.

5. Learned counsel for the petitioner submitted that after grant of divorce on 17.07.2010, he is not liable to pay any further amount, much less, monthly maintenance to the opposite party no. 2 who no more remains his wife. He further submitted that the opposite party no. 2 in her deposition in the Matrimonial Case No. 158 of 2010 had stated before the Court that she does not want any maintenance from the petitioner. It was, thus, submitted that the order passed granting Rs. 2,500/- per month as maintenance to the opposite party no. 2 is bad in law.

6. Learned APP and learned counsel for the opposite party no. 2 submitted that the contention of learned counsel for the petitioner is totally erroneous. It was pointed out that Section 125 of the Code clearly provides that maintenance can be granted by the Court on an application made for the purpose by the wife also



at the time of passing of any decree or even subsequent thereto. It was submitted that the stipulation is that the opposite party no. 2 is still unmarried and, thus, not having any source of income or livelihood has nothing to fall back upon. It was submitted that even the decree of divorce has been taken in a highly suspicious manner since the opposite party no. 2, at the relevant point of time was with the petitioner and under his influence and without either going through or understanding the implication of what has been stated in the petition had just put her signature and she also did not have any say in the matter and furthermore, that she is not intelligent and also a village girl not being aware of the implications or her rights. It was submitted that proceeding in the divorce case being highly questionable would also be apparent from the fact that the initial waiting period of six months has been waived and further that the time from filing till the passing of the final judgment is just seven days. Learned counsel submitted that from the deposition of the opposite party no. 2, which has been brought on record in the present application by way of Annexure-4, it would be apparent that on 17.07.2010, the opposite party no. 2 had deposed in the case and surprisingly, the final judgment has also been delivered on the same day. It was submitted that such haste shown in the matter itself is sufficient to prove that the



whole exercise was not *bona fide*. It was further submitted that the petitioner and his family are financially sound and can afford much more than what has been fixed by the Court below whereas the opposite party no. 2, being unmarried, has no source of income even to maintain a basic decent life.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application. On a purely legal ground, the objection that because the opposite party no. 2 is no more the wife of the petitioner, he is not entitled to pay any maintenance, is clearly erroneous in view of the provision of Section 125(1) (a) Explanation (b) of the Code, which reads as under:

“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 thinks 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 the service of notice of the application to such person.]

Explanation.—For the purposes 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.”

8. From perusal of the order impugned, it is clear that the Court has passed order under Section 125 of the Code and not under the Act. It is well within the power of the Court to invoke jurisdiction which the Statute vests even if any wrong provision has been quoted by any party in the application form before the Court. Mere mentioning of a wrong provision would not take away the right which otherwise vests independently in the Court under any provision of any Statute. In the present case, Section 125 (1)(a) Explanation (b) of the Code specifically confers the



power to award maintenance to a woman who has been divorced also. Moreover, in the order impugned, the Court has specifically mentioned this provision while passing order granting monthly maintenance to the opposite party no. 2. Perusal of the same on facts also reveals that it is well considered and reasonable.

9. Thus, both on facts as well as in law, the Court does not find any ground to interfere in the order impugned.

10. Accordingly, the application stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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