

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.789 of 2016

Arising Out of PS. Case No.- Year-1111 Thana- District-

=====

Kaushlendra Thakur @ Pintu Son of Nand Kishore Thakur@Nand Kumar
Thakur Resident of Village-Ram Nagar, P.s Arer, District Madhubani.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Kiran Kumari D/o Bachcha Mishra Resident of Village Muraliya Chak, P.s
Bisfi, PO- Jaynagar, District Madhubani.
3. Santosh Jha son of Late Yogendra Jha Resident of K-862, Mangolpuri ,Delhi
110083

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.Subhash Kumar Jha, Adv.

For the Opposite Party/s : Mr.Arun Kumar APP

=====

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 20-09-2023

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

2. The present quashing application has been filed under
Section 482 of the Code of Criminal Procedure (for brevity
'Cr.P.C. ') for quashing the order dated 04-08-2015 passed by the
Principal Judge, Family Court, Madhubani in M.R. Case No.
205 of 2011 (Annexure- 6) on the petition filed by the instant
petitioner under Section 125(5) Cr.P.C. The petition was filed by
the petitioner seeking cancellation of the order of maintenance
passed under Section 125 Cr. P.C. on 29-06-2012 (Annexure-2)
whereby the petitioner was directed to pay a sum of Rupees



1000/- (One Thousand) per month to the present O.P. No. 2. The Principal Judge, Family Court, Madhubani, has held that the order of maintenance, passed under Section 125 Cr.P.C. can be cancelled on proof of adultery being established by the applicant/instant petitioner. The Principal Judge, Family Court, Madhubani, has, thus, directed the instant petitioner to prove his assertion of adultery against the present O P No 2 by cogent evidence.

3. The brief factual background, as per the instant petitioner is that, his marriage was solemnized with the present OP No 2 on 19-05-2011. The present OP No 2 was having relationship outside marriage with several persons, who used to visit the house of the petitioner in his absence. When the petitioner objected, the present OP No. 2 started misbehaving with the petitioner's mother and took away her ornaments as well as ornaments of her sister-in-law. The present OP No.2, thereafter, lodged criminal cases, including the case under Section 125 Cr. P.C., out of which, the instant proceedings arise. The OP No.2 did not like the village life and she is in the habit of trapping people in the institution of marriage and, thereafter, indulging in extortion/theft etc,. After committing theft and deserting the petitioner's marriage and house, she has married



with one Santosh Jha (OP No.3). The OP No 2, thus, is living in adultery.

4. The present petitioner filed a copy of petition filed by OP No.3 seeking a declaration of the marriage of OP No.3 with OP No. 2 to be null and void under Section 12(1) (c) of the Hindu Marriage Act. He has also submitted some photographs before the Principal Judge. The petitioner asserted that petition filed by the OP No. 3 under Section 12(1) (c) of the Hindu Marriage Act, is proof of the fact that OP No.2 has indulged in adultery. The OP No.2, as per the impugned order dated 04-08-2015, has denied the allegations levelled by the petitioner in his application filed under Section 125 Cr. P.C. The OP No.2 has contended that notices were issued by the Principal Judge, against the present petitioner in the proceedings under Section 125 Cr. P.C. Even after publication of notice in the newspaper, the present petitioner chose not to appear in the proceedings. Under such circumstance, an *ex parte* order was passed directing for payment of maintenance at the rate of Rupees 1000/- per month to the OP No.2. So as to avoid the order of maintenance, the present petitioner got filed an application under Section 12(1) (c) of the Hindu Marriage Act by a distant relative (OP No.3). The OP No.2 also took a stand that the



petitioner has not assailed/ recalled the *ex parte* order dated 29-06-2012. Till such time, the order dated 29-06-2012, passed under Section 125 Cr.P.C., is not assailed by the petitioner, he cannot be granted any relief under Section 125 (5) Cr.P.C. The present petitioner had paid only an amount of Rs. 4000/- in the Court on 18-04-2013, pursuant to the order dated 29-06-2012. The learned Principal judge, after taking note of Section 125 (5) Cr.P.C. has held that the order, cancelling the maintenance order dated 29-06-2012, may be passed subject to proof that the applicant/OP No.2, is living in adultery. The petition allegedly filed by OP No. 3, under Section 12(1) (c) of the Hindu Marriage Act has been found insufficient to prove the allegation of adultery against the applicant/OP No. 2. The learned Principal Judge has, thus, disposed of the petition filed by the present petitioner with a direction that the assertion of adultery be proved by placing cogent evidence.

5. The learned counsel for the petitioner has assailed the impugned order dated 04-08-2015, passed by the learned Principal Judge by arguing that from perusal of the petition filed under Section 12(1) (c) of the Hindu Marriage Act, by the OP No. 3, and the notice issued by the family Court at Rohini, Delhi, to the petitioner in the said case, the fact of OP No. 2,



solemnizing marriage afresh with OP No. 3 and adultery stands proved. This fact is also apparent from the order dated 01-11-2012 to 16-01-2015, passed in the maintenance Case (M R. Case No. 205/2011) by the learned Principal Judge, family Court at Madhubani, that the petitioner was absent from the Court for a long duration. This period coincides with the time when OP No. 3 has alleged that the present OP No. 2, had solemnized marriage with him.

6. Upon consideration of the facts and circumstances and submission of the parties, as noted above, this Court finds that adultery cannot be said to be proved merely by submission of a copy of petition filed by OP No. 3 under Section 12(1) (c) of the Hindu Marriage Act. Even the continued absence of the OP No. 2, from the proceedings arising out of M R Case No. 205/2011, coinciding with the date of marriage, as alleged by OP No. 3, in HMA No. 202 of 2013, filed before the Family Court, Rohini, Delhi, cannot be said to be proof of the fact of OP No. 2 having solemnized marriage with OP No. 3. Adultery, thus, could not be held to be proved based on these facts, as asserted by the present petitioner in the petition filed under section 125 (5) of the Cr. P.C. Section 125 (5) of the Cr.P.C. reads as follows :-

“(5) On proof that any wife in whose favour an order has been made under this section in 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."

7. From bare reading of Section, under which the petitioner has sought relief, it is obvious that the relief of cancellation of the order of maintenance, can be granted only on proof of the fact that the wife/ present OP No.2, in whose favour the order was made, is living in adultery, or without sufficient reason, refusing to live with her husband/petitioner

8. In the present case, the husband/petitioner has alleged existence of both these circumstances. The order under Section 125 (5) Cr.P.C., however, is not to be passed merely on allegations being made in this regard. What is required is that both the circumstances of adultery and desertion are required to be proved. This Section has, thus, used the expression "on proof". The Court, therefore, would consider as to what proof means.

9. It is settled in law that proof does not require rigid mathematical demonstration. Proof, on the other hand, means such evidence as would induce a reasonable man to come to a particular conclusion, as asserted. In this connection, decision of the Hon'ble Apex Court, in the case of ***T. Shankar Prasad vs. State of A P*** reported in (2004) 3 SCC 753, is being relied upon by this Court. Both circumstances raised by the petitioner,



regarding filing of petition under Section 12(1) (c) of the Hindu Marriage Act, by the OP No.3, and alleged absence of OP No.2, coinciding with her marriage with OP No. 3 as alleged in the petition filed under Section 12(1) (c) of the Hindu Marriage Act, are in the opinion of this Court, is insufficient, to hold proof of adultery being committed by OP No. 2. These two facts, relied upon by the present petitioner, cannot lead to a conclusion of OP No. 2 having deserted the petitioner or the fact of her indulging in adultery. It cannot be said that the present petitioner has discharged his onus to establish proof of any of the two circumstances, contemplated under sub-section (5) of Section 125 Cr.P.C., for canceling an order of maintenance made under Section 125 Cr.P.C.

10. This Court, therefore, finds no reason to interfere with the impugned order dated 04-08-2015, passed by the Principal Judge, Family Court, Madhubani in M R Case No. 205 of 2011 (Annexure- 6).

11. The quashing application is dismissed.

(Madhuresh Prasad, J)

Shyambihari/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	28-10-2023
Transmission Date	28-10-2023

