

Dinesh Kumar Mahto @ Dinesh Kumar Mahato vs The State Of Jharkhand on 4 August, 2023

Author: Subhash Chand

Bench: Subhash Chand

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IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Revision No.440 of 2022

Dinesh Kumar Mahto @ Dinesh Kumar Mahato Petitioner
Versus
1. The State of Jharkhand
2. Rina Kumari @ Rina Devi @ Reena Opp. Parties

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. Sunil Kumar Mahato, Advocate For the State : Mr. Shailesh Kumar Sinha,
A.P.P. For the O.P. No.2 : Mr. Dhramendra Kumar Maltiyar, Advocate

C.A.V. on 25.07.2023 Pronounced on 04.08.2023

1. This criminal revision has been preferred on behalf of the petitioner against the judgment dated 15th February, 2022 passed by the learned Principal Judge, Family Court, Dhanbad in Original Maintenance Case No.454 of 2019, whereby and whereunder the application filed by the Opposite Party No.2 - Rina Kumari under Section 125 Cr.P.C. was allowed and the petitioner was directed to pay 10,000/- per month as maintenance on 10th day of each succeeding month. It was further ordered that the maintenance amount would be payable from the date of application i.e., from 3rd August, 2019.

2. The brief facts leading to this criminal revision are that maintenance application was moved on behalf of the Rina Kumari @ Rina Devi @ Reena Mahato (the Opposite Party No.2 in this case) under Section 125 Cr.P.C. against her husband - Dinesh Kumar Mahato (the petitioner in this case) on the averments that she is a legally wedded wife of Dinesh Kumar Mahato resident of Jhabri, P.O., Jhabri, P.S. Silli, District-Ranchi. After her marriage she went to her in-law's house and lived there peacefully for a week only. After that her husband and her in-laws began to torture her and finally on 28th August, 2015, she was ousted from the matrimonial house and, since, then she had been residing at her parental house having no source of income. It is further averred that she is unable to

maintain herself, to the contrary her husband is a government employee and earns Rs.50,000/- per month from salary, Rs.25,000/- per month from agriculture and Rs.20,000/- per month from other sources. Therefore, prayed for the amount of Rs.25,000/- per month as maintenance.

On behalf of the respondent - husband the written statement was filed on 28th January, 2020, wherein he admitted the date of marriage and averred that the maintenance application is not maintainable in the eyes of law reason being on 22nd August, 2015, it was petitioner (the O.P. No.2 in this case) herself, who left the matrimonial house without rhyme and reason. In spite of several requests made by the respondent - husband, she did not come back to the matrimonial house, rather she misbehaved with him. It is also further averred that he was ready and willing to settle the dispute but the petitioner had denied the same once for all. Lastly, it is also averred that he is still ready and willing to keep her with full dignity.

3. On behalf of the petitioner (Opposite Party No.2 in this case) in oral evidence examined P.W.-1 Rina Mahato, P.W.2 Sukhen Roy and P.W.-3 Dilip Kumar Mahato and in documentary evidence adduced the certified copy of plaint of C.P. Case No.3270 of 2018 as Ext.1, photocopy of letter no.106 dated 4th February, 2020 of Electricity Executive Engineer as Ext.2 and pay slip Ext.3 and for identification, Adhar Card and Pan Card of Balram Singh as Ext. X & X/1 and certified copy of plaint of C.P. Case No.1988 of 2020 as Ext.B for identification.

4. On behalf of the respondent (the petitioner in this case) in oral evidence examined R.W.-1 Dinesh Kumar Mahato.

5. The learned Family Court after hearing the learned counsel for the parties allowed the application under Section 125 Cr.P.C. and the respondent (the petitioner herein) was directed to pay the amount of Rs.10,000/- per month to the Opposite Party No.2 which was to be paid on 10th day of each succeeding month. It was also directed that the said amount was to be paid from the filing of the maintenance application i.e., 3rd August, 2019.

6. Aggrieved from the impugned order dated 15th February, 2022, this criminal revision is preferred on behalf of the petitioner - husband on the grounds that the impugned judgment passed by the learned Family Court is bad in the eyes of law. The learned Family Court did not consider the actual income of the petitioner/husband and without taking into account the liability of the petitioner has passed the impugned order. The Opposite Party No.2 (the wife of the petitioner) is graduate and she has been earning Rs.20,000/- per month from the private tuition. The O.P. No.2 does not want to live with the petitioner and with his mother while the petitioner is ready to keep her with full dignity and honour. The petitioner has also filed a case under Section 9 of the Hindu Marriage Act in the court of Additional Principal Judge-II, Additional Family Court, Ranchi which was decided in favour of the petitioner. The petitioner is a lineman in the Electricity Department and he had got this appointment on compassionate ground. He is having liability to maintain his married brother and married sister. On account of major road accident which the petitioner had met, he is suffering leg injury and has been incurring expenses of the same in treatment. He had also purchased a car on loan for his smooth movement and the installments of the same are being paid by him. On account of being in judicial custody in a case under Section 498-A I.P.C., he was suspended from service.

Lastly, it is submitted that the petitioner is ready to pay his wife Rs.5,000/- per month but not from the date of filing of the maintenance application because he had been remained suspended from his service during that period. On the basis of the aforesaid submissions, the learned counsel for the petitioner prayed to allow this criminal revision and to set aside the impugned judgment passed by the learned Family Court, Dhanbad.

7. I have heard the rival submissions of the learned counsel for the parties and perused the materials available on record.

8. For disposal of this criminal revision, following points for determination are being framed :

i. Whether the wife (the Opposite Party No.2) refused to live with her husband without any sufficient reason, if yes, its effect ?

ii. What amount of maintenance is the wife entitled from her husband ?

9. For determination of the above points, this Court is averted to the evidence adduced oral and documentary on behalf of the parties before the learned Family Court.

10. P.W.-1 Rina Mahato in her examination-in-chief says that her marriage was solemnized on 1st May, 2014 according to Hindu rites and rituals with the petitioner. She lived in her in-law's house properly for one week, thereafter, her husband and family members began to torture her and did maar-peet with her. On 28th August, 2015, she was ousted from the matrimonial house and, since then, she had been residing in her parental house. She is unable to maintain herself and is doing no work. The petitioner/husband is Junior Engineer in Jharkhand Electricity Board Sirdo, Ranchi and is getting Rs.62,000/- per month as salary and he has income of Rs.3-4 lacs from agriculture. He has also business of poultry farm and goat farming and from that he is earning Rs.55,000/- per month. His mother also gets the pension and his both sisters got married. The wife/O.P. No.2 has also filed a criminal case for subjecting her to cruelty and claimed the amount of Rs.25,000/- per month. This witness was not cross-examined, hence, he was discharged from cross-examination.

11. P.W.-2 Sukhen Roy in his examination-in-chief says that he is familiar with Rina Devi and her marriage was solemnized on 1st May, 2014. Thereafter, she went to her matrimonial house and everything between the two was well for one year. Thereafter demand of dowry was made and she was ousted from matrimonial house. The O.P. No.2/wife has no source of income and is doing no job. The opposite party is in service of Electricity Department and get salary of Rs.50,000/- and has also income from agriculture and husbandry amounting to Rs.4 lac. This witness was also not cross-examined despite opportunity given by the court and was discharged from cross-examination.

12. P.W.-3 Dilip Kumar Mahato stated that his sister remained in her in-law's house properly for one year and the petitioner/husband began to torture her for demand of dowry. It is further stated that in the month of August, 2015 his sister was ousted from the matrimonial house and no amount of maintenance was ever given to her and she is unable to maintain herself. His sister is exclusively dependent upon him. The petitioner/husband is in Jharkhand Electricity Department, Ranchi and

get salary of more than Rs.50,000/-. Besides that, he also had income of Rs.2.5 lacs to 3 lacs from the agriculture and Rs.1.5 lac to 2 lacs from husbandry. This witness was also not cross-examined on behalf of the petitioner/husband and he was discharged from cross-examination.

13. On behalf of the petitioner/husband in oral evidence examined R.W. 1 Dinesh Kumar Mahato (the petitioner in this case). This witness in his examination-in-chief says that his marriage was solemnized on 1st May, 2014 with Reena Devi and everything was well for six months and no incident took place in the aforesaid period. Thereafter, she began to do whatever she liked. She used to go to Dhanbad with his brother. He was posted as lineman and he made several efforts to bring his wife to live with him. His mother and brother are dependent upon him. He has no business of poultry or goat farming. He has taken a vehicle on loan. A case was filed against him under Section 498-A IPC in which he had gone to jail and he was also suspended from service. He has also instituted a suit in the court of Ranchi to bring his wife with him in which she had also appeared. He is still ready and willing to keep his wife with him. In cross-examination, this witness denied the suggestion given on behalf of the petitioner that his wife remained in in-law's house properly for 10 to 12 days. He also denied the suggestion that due to assault his wife miscarried. He also denied suggestion that after his marriage when his wife came to home, he had asked for Rs.5 lacs as dowry and because of not giving dowry, he drove her wife away from his house. He further stated that he is getting the salary of Rs.40,000/- per month. He also stated that his mother gets the pension from the department but he don't know the amount of pension is Rs.15,000/- or what. He further stated that his wife had got abortion; but he did not incur the expense. He had not paid any maintenance amount to his wife because he wants to live with her.

14. In documentary evidence on behalf of the wife/O.P. No.2 also filed the photocopy of the C.P. Case No.3270 of 2018. The information sought under RTI Act was also filed in regard to fact the petitioner/husband is in service of the electricity department.

15. On behalf of the petitioner/husband, no documentary evidence was filed before the Family Court, Dhanbad.

16. In this criminal revision on behalf of the petitioner Dinesh Kumar Mahato a supplementary affidavit was filed annexing the photocopy of the certified copy of the judgment dated 23rd April, 2022 passed in Original (MTS) Suit No.495 of 2018 (Dnesh Kumar Mahto vs. Reena Kumari) under Section 9 of the Hindu Marriage Act, 1955.

17. Point for Determination No.(i):- On this point, petitioner

- husband, who was respondent in the maintenance case, it has been stated that his wife has not been living with him without any reasonable cause. This plea was taken by him in paragraph 3 of his written statement, wherein he stated that his wife left the matrimonial house on 22nd August, 2015 without any rhyme and reason and in spite of his several requests she did not come back to the matrimonial home. To this effect, the R.W.1 Dinesh Kumar Mahato has stated during his examination-in-chief before the learned trial court that his wife remained well for six months after solemnization of marriage, thereafter, she began to do whatever she liked arbitrarily and she went to

Dhanbad with his brother. In paragraph 6 of his examination-in-chief, this witness has stated that he has filed a suit in the court of Ranchi for restitution of conjugal rights and number of the case, he does not recollect. His wife has appeared in that case. He also stated that he is still ready and willing to keep her with him. This witness was cross-examined on behalf of the petitioner/wife in which no contrary conclusion could be drawn on behalf of the petitioner/wife and this witness has stated that he is not giving maintenance to his wife reason being he wants to keep her with him.

18. Though before the learned Family Court, Dhanbad, the copy of the order passed by the learned Additional Family Court, Ranchi under Section 9 of the Hindu Marriage Act was not adduced on behalf of the husband/respondent, yet in his written statement he has taken specific pleading in

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regard to filing the suit for restitution of conjugal rights. The husband/respondent in his cross-examination before the learned Family Court, Dhanbad has stated that he has filed a suit in which his wife has also appeared. This suit was decreed by the learned Additional Family Court, Ranchi vide order dated 23rd April, 2022 in which issue No.III was framed which reads as under:

III. Whether the respondent (wife) without reasonable excuse has withdrawn herself from the society of the petitioner (husband) ?

19. This issue no.III was decided by the learned Additional Family Judge in favour of the respondent/petitioner and against the petitioner/O.P. No.2 and held that the wife without any reasonable excuse has withdrawn herself from the society of the petitioner. Admittedly, no appeal was preferred against the judgment dated 23rd April, 2022 in which decree for restitution of conjugal rights was passed till date.

20. On behalf of the Opposite Party No.2 in this criminal revision, the wife/petitioner in the maintenance case, in her maintenance application has taken this plea that she after solemnization of marriage remained well in her matrimonial house only for one week, thereafter she was ousted from the matrimonial house on 22nd August, 2015. She has stated

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that she was ousted from the matrimonial house after having beaten her and tortured her by the family members of her in-law's house and her husband. Though, this witness was not cross-examined on behalf of the husband, as such, her testimony being not shaken in cross-examination shall be admissible in evidence.

21. P.W.-2 Sukhen Roy has stated that the marriage was solemnized on 1st May, 2014 and he is familiar with Reena Devi and Dinesh Kumar Mahato. Reena Devi remained well in her matrimonial house for one year, thereafter, she was tortured for demand of dowry by the members of matrimonial house. This witness was also not cross-examined by the respondent/husband, so his testimony in examination-in-chief shall be admissible.

22. P.W.-3 Dilip Kumar Mahato in his examination-in-chief stated that Reena Devi is his sister and she remained well in her in-law's house for one year, thereafter, she was subjected to cruelty for demand of dowry and was also tortured. She was ousted in the month of August, 2015 from the matrimonial house.

23. Though, all the three witnesses were not cross-examined on behalf of the respondent/husband in maintenance case. If their testimony is read as unrebutted, there is contradiction in testimony of all three witnesses and also the plea which was taken by the petitioner in her

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maintenance application. The Opposite Party No.2/wife in her maintenance application under Section 125 Cr.P.C. has stated that after solemnization of marriage she remained well for one week and thereafter she was subjected to cruelty and tortured and ultimately was ousted on 28th August, 2015 from the matrimonial house. It is also stated that she had also filed a C.P. Case No.1988 of 2020 under Section 498-A of the IPC against her husband before Complaint Case No.3270 of 2018. The copy of C.P. Case No.3270 of 2018 is on record and same was filed on 10th August, 2018. The brother of the O.P. No.2/wife, namely, Dilip Kumar Mahato (the P.W.-3) and independent witness P.W.-2 Sukhen Roy both have stated that Reena Devi remained well and properly without any dispute in her matrimonial house for one year.

24. The marriage was solemnized on 1st May, 2014, if for the shake of argument if she was subjected to cruelty in her matrimonial house till 1st May, 2015, why no complaint in regard to subjecting her to cruelty and torturing her for demand of alleged dowry by her husband or any family member, was ever filed on behalf of the wife before any court till 2018 and after three years from the alleged date of ousting her from the matrimonial house, this complaint was lodged which was registered as C.P. Case No.3270 of 2018. In this case, admittedly, her husband was sent to jail and he was also suspended and the said case is still pending

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before the court concerned. While on behalf of the respondent/husband in maintenance case, R.W.1 Dinesh Kumar Mahato has stated that he has filed the suit for restitution of conjugal rights. His wife left the matrimonial house on her own will and went with her brother. He had instituted a suit for restitution of conjugal rights to bring his wife with him and the said case for restitution of conjugal rights was instituted on behalf of the husband and same was decreed by the learned Additional Family Judge-II, Ranchi. This judgment was never challenged before the appellate court. It supports the averment/plea taken on behalf of the petitioner/husband, who was respondent in maintenance case that it was wife, who has withdrawn herself from the society of the applicant without any reasonable excuse. Therefore, this point of determination is decided in favour of the petitioner/husband and against the Opposite Party No.2/wife.

25. Herein the provisions of Section 125(4) Cr.P.C. become relevant which is quoted hereunder :

"125(4). No Wife shall be entitled to receive an allowance 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."

26. From bare perusal of the provision of Section 125(4) Cr.P.C. there are three grounds under which the wife is not entitled to receive the allowance for the maintenance or the interim

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maintenance and expense of proceeding as the case may be from her husband which are as follows :

- i. If she (wife) is living in adultery;
- ii. If without any reasonable cause she refuses to live with her husband and
- iii. Both (the husband and wife) are living separately by mutual consent.

27. As such in view of Section 125(4) Cr.P.C., the wife, who has withdrawn herself from the society of the petitioner/husband without any reasonable excuse and she refuses to live with him without any sufficient reason despite having instituted the case under Section 9 of the Hindu Marriage Act for restitution of the conjugal rights by the petitioner/husband which was decreed by the learned Additional Family Court, Ranchi vide order dated 23rd April, 2022 in favour of the petitioner/husband and thereafter the continuous offer being made by the petitioner to keep her with all dignity with him; but she refused to reside with the husband.

28. Under these circumstances as conclusion drawn after disposal of this point of determination which is being decided in favour of the petitioner/husband and against the wife/Opposite Party No.2, the Opposite Party No.2 is not entitled to any amount of maintenance.

29. Point for Determination No.(ii):- In view of analysis of the evidence and disposal of the point for determination no.(i)

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and conclusion drawn by this Court there is no need to give any finding on point no.(ii) which is futile in view of point for determination no.(i) being decided against the Opposite Party No.2/wife and in favour of the petitioner/husband.

30. Certainly the finding of the fact recorded by the Magistrate under Section 125 Cr.P.C. cannot be altered by the revisional court; but if the finding of fact is perverse and the court has not taken into consideration the material evidence, so as to come to proper conclusion then the finding of the fact can be interfered with. Herein in this case, the learned Family Judge while passing the order of maintenance did not give any finding on this plea raised on behalf of the petitioner that the wife has withdrawn from his society without any reasonable excuse and she is not living with him without any reasonable excuse. This plea is raised in the written statement of the petitioner/husband and

also being in evidence in the statement of petitioner/husband, it was incumbent upon the learned trial court to frame the point of determination on this point and to give its finding, as such the impugned order passed by the learned Family Court, Dhanbad needs interference.

31. The Hon'ble Apex Court in the case of Amit Kapoor v. Ramesh Chander reported in (2012) 9 SCC 460 at paragraph 12 & 20 has held as under :

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect

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or an error of jurisdiction or law. There has to be a well- founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression "prevent abuse of process of any court or otherwise to secure the ends of justice", the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused."

32. Accordingly, this criminal revision is hereby allowed.

33. Consequently, the order dated 15th February, 2022 passed by the learned Principal Judge, Family Court, Dhanbad in Original Maintenance Case No.454 of 2019 is hereby quashed and set

aside.

34. Let the Lower Court Records along with the copy of this judgment be sent forthwith to the court concerned.

(Subhash Chand, J.) Rohit/A.F.R.