

Jharkhand High Court

Prakash Mishra vs Reeta Devi @ Chandi on 12 February, 2020

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IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Appellate Jurisdiction)
F.A. No. 41 of 2015

Prakash Mishra	 Appellant
	Versus	
1. Reeta Devi @ Chandi		
2. Suresh Kumar Singh	 Respondents

For the Appellant : Mr. Jitendra Tripathi, Advocate.

Mr. Niraj Narayan Mishra, Advocate.

For the Respondent no. 1: Mr. Rajendra Ram Ravidas, Advocate. For the Respondent no. 2: Mr. Bijay Kumar Sinha, Advocate

PRESENT HON'BLE MR. JUSTICE APARESH KUMAR SINGH HON'BLE MR. JUSTICE KAILASH PRASAD DEO

Per Kailash Prasad Deo, J. Heard, learned counsel for the appellant and learned counsel for the respondents.

2. The first appeal has been preferred by the appellant/petitioner against an ex-parte order dated 09.02.2015 passed by learned Principal Judge, Family Court, Gumla in Divorce Case No. 37 of 2011, whereby the application filed by the appellant/petitioner for dissolution of marriage and for decree of divorce against Reeta Devi @ Chandi has been dismissed.

3. Learned counsel for the appellant has assailed the impugned order on the ground that the marriage was solemnized on 25.02.1988 and after birth of three children, they are living separately since 1997. The appellant/petitioner had preferred a divorce petition i.e. Divorce Case No. 13 of 2004, which was dismissed vide order dated 04.04.2011.

4. Learned counsel for the appellant has submitted that as there is irretrievable breakdown of marriage and the parties are living separately since 1997, the marriage may be dissolved.

5. Learned counsel for the appellant has further submitted that he has offered to pay a sum of Rs. 5,00,000/- (Rupees Five Lacs) for dissolution of marriage and as there is an irretrievable breakdown of marriage between the parties, the appeal may be allowed and the judgment and decree passed by the learned Family Court may be set aside .

6. Learned counsel for the respondent no. 1, Mr. Rajendra Ram Ravidas has submitted that the appellant has no case for dissolution of marriage. The wife Reeta Devi @ Chandi is not inclined to accept the offer given by the appellant, rather she has a valid reason for not living with the appellant/petitioner, which will be apparent from the facts of the case.

7. Learned counsel for the respondent no.1 has submitted that the marriage was solemnized on 25.02.1988 and from the said wedlock, they are blessed with three children. Priyambada Kumari and Satyambada Kumari are daughters, who are now married and one son Dhiraj @ Sitam Mishra already died in the year 2011 because of drowning.

8. Learned counsel for the respondent no.1 further submitted that earlier she had filed a criminal case under Section 498A of the Indian Penal Code and 3 / 4 of the Dowry Prohibition Act against the appellant Prakash Mishra and his father, brother and sister-in-law vide G.R. No. 1596 of 1998 in which the appellant/petitioner remained in custody from 18.08.1998 to 07.01.1999 and thereafter, the said case was compromised between the parties on the condition that both will live separately and the husband will pay a sum of Rs. 3,500/- per month as maintenance to the wife. It is further submitted that earlier appellant had filed a divorce case vide Divorce Case No. 13 of 2004, in which interim maintenance of Rs. 5,000/- was ordered to be paid by the appellant/petitioner to the Respondent No.1 (wife), but the appellant did not pay the same and as a result, Divorce Case No. 13 of 2004 was dismissed vide order dated 04.04.2011.

9. Learned counsel for the respondent no.1 has further submitted that the appellant/petitioner has instituted a case on 08.03.2011 bearing G.R. No. 314 of 2011 under Sections 497, 506, 120B of the Indian Penal Code, which is pending in the court of SD.J.M., Gumla alleging illicit relationship between respondent no. 1 Reeta Devi and Suresh Kumar Singh. The respondent has subsequently filed another case on 10.08.2011 before the Court of Chief Judicial Magistrate, Hazaribagh vide Hazaribagh P.S. Case No. 120 of 2011 against the appellant/petitioner under Sections 325, 323,498A/34 of the I.P.C. and Section 3 / 4 of the Dowry Prohibition Act.

10. In the present divorce case, notice was issued to the respondent and substituted service of notice was also published in Prabhat Khabar newspaper, Lohardaga, Gumla edition, but as there was no information to her, she could not appear before the court, as such, an ex-parte Judgment was passed by the learned Family Court.

11. From perusal of order of this case, it transpired foul play by the appellant/petitioner in service of summons also. Office noted this fact in the margin of the order sheet of this case dated 18.07.2013 that the address of the parties are different and correction is required. Later on, order of publication was given to the appellant/petitioner and the information about the case was published in daily newspaper as substituted service of notice by publication in Prabhat Khabhar Newspaper

Lohardaga, Gumla Edition dated 11.07.2014.

12. Admittedly, the respondent no.1 lives at Hazaribagh and publication of Prabhat Khabar Newspaper Lohardaga, Gumla Edition has no circulation at Hazaribagh, rather Hazaribagh edition has publication in that locality. As such, the appellant/petitioner cunningly had given address of Lohardaga and the notice was published in Lohardaga Gumla edition of Prabhat Khabar. So, it cannot be said that it was a valid publication.

13. From perusal of record, it appears that appellant/petitioner has altogether examined six witnesses namely, A.P.W.-1 Basant Kukar Sahu, A.P.W.-2 Tetru Oraon, A.P.W.-3 Rajkumar Bhagat, A.P.W.-4 Ramakant Mishra, A.P.W.-5 appellant/petitioner, Prakash Mishra and A.P.W.-6 Charo Munda. Apart from oral evidence, the appellant/petitioner has also adduced documentary evidences i.e. Exhibit-1 is cognizance order dated 27.07.2011 passed in G.R. No. 314 of 2011. Ext.1/1 is the F.I.R. of G.R. Case No. 314 of 2011. After hearing learned counsel for the parties, the court below has considered that earlier this appellant/petitioner had filed Divorce Case No. 13 of 2004, which was compromised and the petitioner was ready to pay interim allowance of Rs. 5,000/- per month to the respondent no. 1 (wife) under Section 24 of the Hindu Marriage Act vide order dated 15.02.2011.

14. These facts have been admitted by appellant/petitioner in his deposition at paragraph no.8, but he cannot pay that amount. In the said Divorce Case No. 13 of 2004, the interim allowance under Section 24 of the Hindu Marriage Act was made effective from 22.03.2006, but the last payment of Rs. 5,000/- was made upto 22.01.2008 and after that no payment was made. As such, a specific direction was issued on 15.02.2011 directing the appellant/petitioner to deposit the arrears of Rs. 1,37,500/- within 15 days. The order was not complied, the petitioner has deliberately disobeyed the order and tried to drag the respondent no.1 (wife) into litigation for no fault on her part and ultimately, the Divorce Case No. 13 of 2004 was dismissed. Again Divorce Case was filed as Divorce Case No. 37 of 2011 on 08.11.2011. After that, four years lapsed and the arrears of maintenance was accumulated to the tune of Rs. 3,77,500/-. The appellant/petitioner has not whispered anything about payment of such arrears amount, rather some documents have been brought on record, which have been marked as Exhibits. Those documents are related with the criminal case as Exhibit-1 is cognizance order dated 27.07.2011 passed in G.R. No. 314 of 2011, Exhibit-1/1 is Formal F.I.R. of G.R. No. 314 of 2011.

15. From perusal of the record, it appears that one case bearing no. M. Case No. 19 of 2014 was filed by one Samo Devi under Section 125 Cr.P.C. against this appellant/petitioner, in which it has mentioned that she has married with Prakash Mishra (appellant herein) on 07.12.2008 at Kapilnath Mandir Nagar Thana, District - Gumla according to Hindu Riti Riway. A compromise petition was filed by the parties where Prakash Mishra accepted the marriage and said that after his death Samo Devi will take his retiral benefits and pensionary benefits. This case is still pending, but in that case Prakash Mishra has accepted the solemnization of marriage with Samo Devi in the year 2008 and enjoying the marital life with said Samo Devi and respondent no. 1 Reeta Devi @ Chandi is the actual sufferer of the cruelty committed by the appellant/petitioner. Considering these aspects of the matter as well as that the case is still pending no finding was given on Exhibit-1 & 1/1. The learned court below has dismissed the application filed by the petitioner, as the petitioner is not entitled to

get any relief and accordingly, the appeal dismissed.

16. Learned counsel for the appellant submitted that out of arrears of 3,77,500/-, appellant has already paid Rs. 3,42,000/- and balance amount of Rs. 33,500/- has not been paid. So, learned counsel for the appellant has submitted that considering the long separation of the parties, the appeal may be allowed.

17. We have heard learned counsel for the parties and perused the materials brought on record. From perusal of record, it appears that the marriage was solemnized on 25.02.1988 and both resided at Bharno in the house of appellant/petitioner till 1997. They have been blessed with three children, two daughters and one son. The relationship became strained. The wife has filed a maintenance case before the court of Chief Judicial Magistrate, Hazaribagh and followed by criminal case vide G.R. No. 1596 of 1998 against husband (appellant) and other family members under Section 498A of I.P.C. and Section 3 / 4 of the Dowry Prohibition Act. The appellant (husband) remained in custody from 18.08.1998 to 07.01.1999. The appellant shifted and started living at Chatti under Bharno P.S., District - Lohardaga, where appellant is posted as Assistant Teacher at Pipratoli, Dumbo Primary School, Bharno.

18. The wife (respondent no. 1) Reeta Devi @ Chandi lodged a complaint at Bharno police station which was compromised on the terms that she will be paid Rs. 3,500/- per month as maintenance by the appellant/husband. Thereafter, the appellant filed a Divorce Case No. 13 of 2004 on 26.08.2004, in which interim maintenance under Section 24 of the Hindu Marriage Act was passed, but the same was not complied with and as such, Divorce Petition No. 13 of 2004 was dismissed in terms of order dated 04.04.2011. Thereafter, the present Divorce Suit No. 37 of 2011 was filed.

19. From perusal of the record, it appears that learned Family Court has discussed the service of notice in paragraph-16 of the impugned order. It appears that this appellant being a cunning person had given wrong address of his wife (Respondent No.1) and as such, service of summons was not actually effected upon her, rather, vide substituted service of notice, the notice was published in Prabhat Khabar, Lohardaga Gumla Edition on 11.07.2014, though respondent no. 1 was residing at Hazaribagh. The court has considered such publication of service of notice in the Prabhat Khabar of Lohardaga, Gumla Edition to be valid. As such, the wife had valid reason for not appearing before the Family Court at Gumla.

20. So far merit of this case is concerned, it appears that this petitioner/appellant has solemnized marriage with one Samo Devi. Samo Devi has also filed a Maintenance Case No. 19/2014 under Section 125 of the Cr.P.C., in which the appellant/petitioner Prakash Mishra has entered into compromise and accepted the marriage with Samo Devi in the year 2008 at Kapilnath Mandir, Nagar Thana, District-Gumla on 07.12.2008 and also executed a compromise stating therein that after death of Prakash Mishra, Samo Devi will take his retiral benefits as well as pensionary benefits. Considering these aspects of the matter coupled with criminal case filed by the wife (respondent no.1), the act of the appellant/petitioner itself shows that no case is made out for dissolution of marriage against the wife (respondent no.1). Rather she is a victim of act committed by this appellant-petitioner. She has filed a criminal case in which this appellant/petitioner has persuaded

for a compromise on payment of interim maintenance. The said amount was also not paid in true spirit and this appellant/petitioner is living a happy married life with another lady Samo Devi and seeking dissolution of marriage against his own wife Reeta Devi @ Chandi. As such, the court below has rightly considered that appellant / petitioner is perpetrating cruelty with respondent Reeta Devi @ Chandi and enjoying conjugal life with Samo Devi by refusing to grant the decree of divorce under Section 13 of the Hindu Marriage Act. As such, no case is made out on his part for divorce and the appellant cannot be allowed to take advantage of his wrong doing. Accordingly, this Court on consideration of the materials on record and the submission of parties does not find any reason to interfere with the same. The finding recorded by the learned Family Court is on proper appreciation of the facts and in accordance with law, which does not warrant any interference by this Court.

21. Accordingly, this appeal preferred by the appellant/husband is dismissed and the impugned order dated 09.02.2015 passed by the learned Family Court, Gumla in Divorce Case No. 37 of 2011 is hereby affirmed. Decree be prepared accordingly.

(Aparesh Kumar Singh, J.) (Kailash Prasad Deo, J.) Jharkahand High Court Dated : 12/02/2020
Sunil-Jay/