

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.989 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- GOPALGANJ

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1. Md. Naimullah @ Jiauddin Ahmad, son of Ali Asghar, resident of village -
Bhagwatipur, P.O. & P.S. Barauli, District - Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar,
2. Nasima Khatoon, daughter of Taslim, resident of village Amarpura, Kayasth
Tola, P.S. Mohammadpur, District - Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y. V. Giri, Sr. Advocate with
Mr. Pranav Kuamr, Advocate

For the Respondent/s : Mr. M. N. Parwat, Sr. Advocate with
Mr. S. K. Jha, Advocate
Dr. Indihar Kumari, APP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 12-02-2015

1. The Petitioner seeks quashing of the judgment and order dated 15.03.2012 passed by the Principal Judge, Family Court, Gopalaganj, in Misc. Case No.02 of 2009 by which he has allowed maintenance to the divorced wife of the Petitioner under Section 125 Cr. P. C.

2. The background facts of the case is that marriage between the spouses was solemnized on 24.10.2013 after which the Petitioner went to middle east for earning. In the meanwhile, the Opposite Party No.2 was tortured for ends of dowry and she was thrown out from the matrimonial house. Thereafter, she filed an application for maintenance, whereas, the Petitioner filed a suit for decree of divorce on the ground of adulterous behavior of his wife.

3. In the suit for divorce, due evidence was led and the Principal Judge, Family Court, Gopalaganj, concluded that during her marriage she had given birth to an illegitimate child and also that divorce had already taken place between the parties and, therefore, the suit was decreed in favour of the Petitioner.

4. In the maintenance matter, the Court considered that there was occasional lapse which could not be termed adultery and hence allowed maintenance of 3,000/- per month as monthly upkeep of the Opposite Party No.2.

5. Counsel for the Petitioner submits that Section 125 Cr. P.C. is very clear that maintenance can be allowed to a person only when she is neglected without reasonable cause. Here, in this case it was for genuine reasons that the Petitioner was not maintaining the Opposite Party No.2 and hence, the order of maintenance is against the provision of law.

6. On the other hand, counsel for the Opposite Party No.2 submits that maintenance has been allowed to the Opposite Party No.2 on the ground that occasional lapses do not make out adultery and hence, the Petitioner did not have reasonable cause for neglecting her.

7. He is supported by a decision reported in 2002 Cr. L. J. 1397 (Sau. Chanda P. Wadate Vs. Preetam G. Wadate and

another), where the Bombay High Court had considered various decisions in this regard and held that occasional lapses do not make out adultery.

8. On going through the decision, I find that the facts were quite otherwise. It was in the context of such facts that it was held requirement to establish that more than one incidence of adultery had to be brought home to hold the wife was 'living in adultery' within the meaning of Sub Section 4 of Section 125 Cr. P. C. In the present case, it is an admitted position that the Petitioner was living in middle east at the relevant time and it was not possible for him to prove that the Opposite Party No.2 on repeated occasions had strayed into a physical relation with another. The fact that a child was born of the said relationship goes to prove that it was not a one time alliance.

9. Hence, the judgment and order dated 15.03.2012 passed by the Principal Judge, Family Court, Gopalaganj, in Misc. Case No.02 of 2009, is hereby set aside.

10. The application stands allowed.

(Anjana Prakash, J)

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