

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.1025 of 2011

Vinay Kumar Singh S/O Raj Ballabh Singh Resident Of Village - Ram Nagar
Diara , P.S. - Athmalgola (Barh) , District - Patna

.... Petitioner

Versus

1. The State of Bihar

2. Sabita Devi W/O Sri Binay Kumar Singh And D/O Sri Dineshwar Singh
Resident Of Village - Ram Nagar Diara , P.S. - Barh , District - Patna , At Present
Residing - Balia , P.S. - Desari , District - Vaishali

.... Respondents

Appearance :

For the Petitioner : Mr. Tej Narayan Singh, Advocate

Dr. Pushpa Kumari, Advocate

For the Respondent No.1 : Mrs. Renu Kumari, A.P.P.

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 22-01-2015

This revision is directed against the order, dated
30th June, 2011, passed, in Maintenance Case No.63 of 2006,
by the learned Principal Judge, Family Court, Vaishali, at
Hajipur.

2. By the order under revision, learned Principal
Judge, Family Court, Vaishali, has directed the petitioner
herein, who was opposite party in the maintenance proceeding,
under Section 125 of the Code of Criminal Procedure, to pay,
within 15th of every succeeding month, maintenance allowance
at the rate of Rs.10,000/- per month to the opposite party

herein, who was the applicant in the maintenance proceeding, with further direction to the present petitioner to pay, within three months and in three equal installments, arrears of maintenance allowance at the rate of Rs.5,000/- per month, the arrears having accrued from the date of institution of the proceeding, i.e., 08.03.2006.

3. The material facts and various stages, which have led to the present revision, may, in brief, be set out as under:

4. The opposite party herein made an application, under Section 125 of the Code of Criminal Procedure, seeking a sum of Rs.5,000/- per month from the petitioner herein for her own maintenance and also for maintenance of her daughter, who was, at the relevant point of time, unmarried, the case of the applicant-opposite party being thus :

- (i) The applicant is the legally wedded wife of the opposite party, i.e., the petitioner herein. Their marriage had been solemnized in the month of June, 1982, in accordance with Hindu rites and customs and their cohabitation led to the birth of a female baby, who is aged about 22 years, but unmarried. The applicant alleged that after two years of her marriage with the opposite party, who is



a Guard in the Railways, he and his family members had begun torturing her physically and mentally and even attempted to kill her, because the father of the applicant was very poor and he was not, therefore, able to fulfill the demands of dowry raised by them. Left with no alternative, the applicant lodged a criminal case by stating that she was being subjected to cruelty by her husband and his relatives for their inability to meet their demands for dowry and that the case, so lodged, came to be registered as Barh P.S. Case No. 128 of 1988, under Sections 342/323/307/379/34 of the Indian Penal Code and under Section 3/4 of the Dowry Prohibition Act, 1961.

- (ii) In her application, the applicant has stated that while they remain wedded to each other, the opposite party has married one Smt. Sunita Devi, daughter of Kapildeo Singh, a resident of Village- Doma, Police Station- Khaidar Sarai, district Gaya, and lives with his second wife in a residential quarter allotted, in his name, by the Railways. The applicant



has also stated, in her application seeking maintenance, that she had lodged a complaint, in this regard, with the Railways also; but she has been made to live at her parental house without any source of livelihood nor is any maintenance being paid to her resulting into acute financial crisis for her and her unmarried daughter. It is stated by the applicant, in her application under Section 125 of the Code of Criminal Procedure, that the opposite party (i.e., the petitioner herein) has refused to take care of his said daughter and to meet expenses of his daughter's marriage. The applicant has also stated that she is living at her parental house for the last about 20 years with her daughter and no maintenance has been paid to her during the period, though her husband is a Guard in the Railways and his income is Rs.25,000/- to 30,000/- per month. Besides this, he has agricultural land measuring about 10 to 15 bighas, which also forms his source of income. The applicant, therefore, prayed for direction to the opposite party, i.e., the

petitioner herein, to pay to her maintenance as indicated above.

5. The petitioner herein appeared, in the maintenance proceeding, as opposite party therein, and resisted the maintenance proceeding by contending that the accusations against him are false and baseless. He, however, admitted his marriage with the applicant, but contended that she had left her matrimonial house on her own accord and he had not succeeded in persuading her to come back to her matrimonial house. He also pointed out that the case of dowry demand, which his wife had lodged, had been compromised by the intervention of their well-wishers and that he had also given to the applicant land, measuring about two bighas, by executing a registered sale-deed, in this regard, in the year 1990. It is also contended by the petitioner herein (i.e., opposite party in the maintenance proceeding), that he pays to the applicant a sum of Rs.500/- per month at the instance of their Panchayat and, recently, he paid Rs. 80,000/- for the marriage of his unmarried daughter.

6. Having considered the evidence, which was adduced by both the parties, the learned Court below reached the finding that the parties to the maintenance proceedings were legally wedded, the applicant had no means of maintenance and had been living at her parental house, for

more than 20 years, with her daughter and that during this period, the opposite party, i.e., the petitioner herein, had not paid maintenance. Even the opposite party, i.e., the petitioner herein, could not prove that he had made any payment of maintenance to his wife or daughter. The learned Court below further noted that there was no inconsistency in the evidence adduced by the applicant.

7. Coupled with the above, the learned Court below further noted that the opposite party filed a petition, on 03.06.2011, with a prayer to allow maintenance at the rate of Rs.10,000/- per month on the ground that the monthly maintenance amount of Rs.5,000/-, as prayed for by her earlier, was not sufficient to meet her expenses inasmuch as the pay of the opposite party, i.e., the petitioner herein, was Rs.35,000/- per month.

8. With the findings so record, as indicated above, the learned Court below has passed the order, which stands impugned in this revision.

9. We have heard learned counsel for the parties concerned.

10. It could not be disputed before us that the petitioner herein is a Guard in the Railways and he had been receiving Rs.35,000/-, as salary, per month and that the said sum of Rs.35,000/- already stands revised. There is also no

dispute that the applicant, i.e. the opposite party herein, is legally wedded wife of the present petitioner. Further fact, which emerges from the evidence on record, is that the petitioner herein has, indeed, married Smt. Sunita Devi and has been living with her in the residential quarter allotted to him by the Railways.

11. Because of the fact that the opposite party, i.e., the petitioner herein, is married to Smt. Sunita Devi, the applicant (i.e., the opposite party no.2 herein) has every right to refuse to live with him and since she had no independent source of livelihood, the present petitioner, who earns well, is bound to maintain the applicant.

12. It has been contended before us, on behalf of the petitioner herein, that alteration in the allowance from Rs.5,000/- to Rs.10,000/- is impermissible. Suffice it to point out that the present one was not a case of alteration of the sum, which was required to be paid as maintenance allowance, inasmuch as question of alteration arises, where maintenance has already been granted and the sum of money, paid or granted as maintenance, is required to be altered. Far from this, the present case is a case, wherein the applicant came initially with the prayer for maintenance allowance at the rate of Rs.5,000/- per month, but during the pendency of the maintenance proceeding, she filed a petition, on 03.06.2011,

seeking direction for payment of maintenance allowance at the rate of Rs.10,000/- per month. Her prayer was, therefore, covered by the provisions of Section 125 of the Code of Criminal Procedure.

13. Because of what have been discussed and pointed out above, we are clearly of the view that the learned Court below has not erred, legally or factually, in giving the directions, which it has given and which have been impugned in this revision.

14. In the result and for the reasons discussed above, this revision fails and shall accordingly stand dismissed.

(I. A. Ansari, J)

Pawan/- NAFR

(Chakradhari Sharan Singh, J)

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