

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.696 of 2014

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1. Bibi Samina Khatoon @ Rani Khatoon , D/o Md. Jabbar Alam , W/o Md. Rafique Ahmad .

2. Najni Begam , D/o Md. Rafique Ahmad . (Minor) through her natural guardian petitioner no. Bibi Samina Khatoon @ Rani Khatoon , Both Resident of Village - Lali hai , P.S. Mufassil Katihar , District - Katihar , at present resident of Mohalla - Driver Tola Ward no. 15 , P.S. & District - Katihar

.... Petitioner/s

Versus

1. The State of Bihar.

2. Md. Raffique Ahmad sin of Nazir Ahmad resident of Village - Lali hai , P.S. Mufassil Katihar , District - Katihar ,

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Musowir

For the Respondent/s : Mr. Arun Kumar Panday(App)

For Opp-Party No.2 : Mr. Raghvendra Kr. Singh

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

5 23-12-2016 Heard learned counsel for the parties.

2. The petitioners are aggrieved by an order, dated 16.06.2014 passed by learned Additional Principal Judge, Family Court, Katihar in Maintenance Case No. 137 of 2008, whereby he has rejected the petitioners' claim for grant of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the **Code**). The petitioner No. 1 is the wife of Opposite party No.2, whereas petitioner No.2 is his minor daughter.

3. Learned counsel for the petitioners has submitted



that the Court below has wrongly refused to grant maintenance on misreading of the evidence adduced in the said case and has held that the petitioner No.1 was earning a sum of Rs. 100/- per day from a Tea Shop run by her. He has drawn my attention to the concerned evidence of the petitioner (Witness No.3), wherein in her cross-examination she has deposed that her father (*Abba*) runs a Tea Shop and earns a sum of Rs. 100/- per day.

4. Learned counsel appearing on behalf of Opposite party No.2, on the other hand, has submitted that the petitioner No.1 in her deposition has clearly stated that she was not willing to live with the petitioner and she wanted to have divorce. In such circumstance, he submits that since the petitioner No.1 herself is not willing to live with the Opposite party No.2 without any reasonable cause, she is not entitled to any maintenance under Section 125 of the Code.

5. In reply, learned counsel for the petitioners has submitted that the evidence adduced before the Court below to the effect that she was thrown out from the house has not been taken into account properly.

6. So far as finding recorded by the Court below that petitioner No.1 earns a sum of Rs. 100/- per day and therefore, she is also not entitled for any maintenance, in my opinion, is



erroneous on the face of it after having seen the evidence of the petitioners, a copy of which has been brought on record by way of Annexure-2 to this application.

7. The impugned order dated 16.06.2014 is accordingly, set aside. The matter is remanded back to the Court below to consider the matter afresh and decide whether there was any material to establish that there existed reasonable cause of which the petitioner No. 1 was compelled to stay away from Opposite party No.2 and whether in view of the evidence of Witness No.3, the petitioner, which has apparently been misread by the Court below, the petitioner could be validly denied her of claim maintenance under Section 125 of the Code. I further notice that the Court below has not properly considered the claim for maintenance of Opposite party No.2, the minor daughter of the petitioner and Opposite party No.2.

8. This application is allowed.

9. The Court below is directed to pass an order afresh within a period of three months from the date of receipt/production of a copy of this order.

(Chakradhari Sharan Singh, J)

ArunKumar/-

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