

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.624 of 2014

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1. Chhotan Devi @ Fulkali Devi Wife of RAM Naresh Singh Resident of Village-Chitsari, P.O.-Bishambharpur, P.S.-Kaisma, District-Aurangabad at present resident of mohalla-Bank Colony, Maharpur, P.O.-Bihar Sharif, P.S.-Laheer, District-Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar
2. Ram Naresh Singh null Resident of Village-Chitsari, P.O.-Bishambharpur, P.S.-Kaisma, District-Aurangabad at present resident of staff quarter, Doman Hill, P.S.-Chirmani, P.O.-Sonamani, District-Kauriya, Chhatisgarh.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar

For the Respondent/s : Mr. Ram Chandra Singh(App)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH

ORAL ORDER

4 23-12-2016 Heard learned Counsel for the parties.

2. The petitioner is wife of Opposite party No.2. She is aggrieved by an order, dated 02.07.2014 passed in Maintenance Case No. 22(M) of 2012 by learned Principal Judge, Family Court, Nalanda at Bihar Sharif, whereby he has dismissed an application filed by the petitioner under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the **Code**), seeking maintenance.

3. The Opposite party No.2 retired as Store Keeper from Doman Hill Colliery, Madhya Pradesh. It was the claim of the petitioner before the Court below that the Opposite party No.2 had received a sum of Rs. 35 lacs as post retirement benefits. Learned



Court below refused to grant any maintenance in favour of the petitioner on the ground that howsoever the amount might have been received by the Opposite party No.2 upon his retirement; the petitioner was not entitled for any share in the said amount. The pension, which the Opposite party No.2 was found to be receiving was at the rate of Rs. 6,522/-. Considering these facts the Court below has held that the petitioner was not entitled for any maintenance amount since she was living away from the Opposite party No.2 without any reasonable cause.

4. From the order itself, I find that there was enough evidence before the Court below that the Opposite party No.2 has contracted another marriage and at least she is keeping a mistress and has children out of the said relationship. In this circumstance, the finding of the Court below that the petitioner was living away from the Opposite party No.2 without any reasonable cause is not at all sustainable, in view of the clear stipulation in explanation to Section 135(3) of the Code, which reads thus:-

“125(3) x x x x
X x x x

Explanation.- If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him”.

5. Learned Counsel for the Opposite party No.2 initially attempted to support the order passed by the learned Principal Judge, Family Court, Nalanda. He has, however,



agreed on the instructions received from his client that this Court may direct payment of a lump sum amount of Rs. 3 lacs by Opposite party No.2 to the petitioner as maintenance amount.

6. Learned counsel for the petitioner has no objection if the said amount is directed to be paid to the petitioner for her maintenance. He submits that after payment of the amount of Rs. 3 lacs, the petitioner shall not raise any claim for further maintenance from the Opposite party No.2.

7. In view of the stand taken on behalf of the parties, this application is allowed in following terms:-

(i) The order dated 02.07.2014 passed by the learned Principal Judge, Family Court; Nalanda at Bihar Sharif in Maintenance Case No. 22(M) of 2012 is set aside.

(ii) The Opposite party No.2 is directed to pay a sum of Rs. 3 lacs to the petitioner through Bank draft within a maximum period of two months from today.

(iii) The petitioner shall, after payment of the said amount of Rs. 3 lacs, not raise any further claim in respect of her maintenance.

8. This disposes of the application.

(Chakradhari Sharan Singh, J)

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