

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.451 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- NALANDA (BIHARSHARIFF)

1. Babi Devi W/o Upendra Sharma @ Narendra Sharma, D/o Deep Narayan Sharma,
2. Sushant Kumar,
3. Shashikant Kumar,

Both are minor sons of Upendra Sharma @ Narendra Sharma

All are resident of village - Kheman Bigha, P.S. Hilsa, District – Nalanda

.... Petitioners

Versus

1. The State of Bihar
2. Upendra Kumar S/o Shiv Sharan Sharma R/o village - Kheman Bigha, P.S. Hilsa, District - Nalanda, At present at Driver in Civil Surgeon Officer, Sadar Hospital Siwan, P.S. Siwan, District - Siwan

.... Opposite Parties.

Appearance :

For the Petitioner/s : Mr. Abrind Kumar, Advocate
For the State : Ms. Asha Devi, APP
For the informant : Mr. Sachidanand Choudhary, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-02-2016

By way of the present application preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short “CrPC”), the petitioner seeks quashing of the order dated 03.09.2014 passed by the learned Principal Judge, Family Court, Nalanda at Biharsharif in Maintenance Case No. 18(M) of 2012, whereby the prayer for grant of ad-interim maintenance made under Section 125

CrPC in favour of the petitioners was rejected. Petitioners in the present case are Babi Devi, Sushant Kumar and Shashikant Kumar, that is, wife and her two sons whereas opposite party no. 2 is husband of petitioner no. 1 Babi Devi. For the sake of convenience, parties shall be referred to as husband, wife and sons.

2. Upendra Kumar got married to Babi Devi on 26.04.1999. At that time he was unemployed and was dependent on agricultural income. Two sons Sushant Kumar and Shashikant Kumar were born to Babi Kumari out of the wedlock who were aged about five years and 3 years respectively at the time of filing of the application under Section 125 CrPC on 10.02.2012. In June, 2005, Upendra Kumar was appointed as driver in the Sadar Hospital, Siwan. The parties could not pull on together and allegations of demand of dowry, cruelty etc. were levelled against the husband by the wife. On 10.02.2012, an application under Section 125 CrPC was filed by the wife and two sons seeking maintenance of Rs.20,000/- per month from the husband on the ground that he was having a monthly income of Rs.15000/- from salary and, in addition to the salary, he was having substantial income from farming as he owns fertile land in the village. It was also claimed that the husband owns an ambulance and runs it on hire at Patna. The wife claimed that the husband was having

monthly income of Rs.20,000/- from it.

3. The husband denied the allegations made by his wife and sons. He stated that he is always ready to keep and maintain his wife and sons according to his means. He, however, took plea that the second son Shashikant Kumar was not born out of the wedlock of the husband. He stated that except the salary of a driver he has no other source of income. He also stated that he has old parents, who are dependent upon him.

4. Learned counsel for the petitioners has submitted that the impugned order passed by the learned Principal Judge, Family Court is bad and erroneous in law. The wife was being subjected to cruelty in her marital home in various ways and the petitioners were ousted from the house by the husband about two years prior to filing of the maintenance case under Section 125 CrPC. In an unavoidable and compelling circumstance created by the husband, the wife filed an application before Officer-in-Charge Hilsa Police Station pursuant to which Hilsa P. S. Case No. 278 of 2009 was lodged against the husband *inter alia* under Section 498-A IPC. After institution of the case, husband approached the wife and proposed to compromise the case pursuant to which a compromise petition was filed on 18.05.2010 in the Court of ACJM, Hilsa and thereafter the wife once again went to her marital



home with her husband but only after few months, she was again subjected to cruelty and torture and was kicked out of her marital home. He has further contended that because of the past conduct of the husband, the wife refused to go to her marital home perceiving threat to her live. However, the Principal Judge did not appreciate the facts of the present case in correct perspective and rejected the application filed under Section 125 Cr.PC mechanically on the ground that the wife has refused to go to her marital home and only wants maintenance from her husband.

5. On the other hand, learned counsel for the husband has contended that there is no error in the impugned order passed by the Court below. The husband had appeared and filed his rejoinder in the Court below on receipt of notice on 08.10.2012 stating *inter alia*, that he is ready and willing to maintain his wife and sons according to his means. He has further contended that the husband being driver in the office of Civil Surgeon Office at Siwan has very limited income and has also liability to maintain his eighty years old parents. According to him, the wife has refused to live in her matrimonial home without any rhyme or reason. Hence, the learned Principal Judge has rightly rejected the application filed on her behalf for grant of interim maintenance.

6. I have heard respective counsel for the parties

and perused the record.

7. I find that the application filed for grant of interim maintenance has been rejected by the learned Principal Judge solely on the ground that the wife has refused to go to her marital home.

8. Admittedly, the husband is in Government service and is having income of Rs.15,000/- per month as salary.

9. In the facts of the instance case, I am of the considered opinion that the Court below has lost sight of the background in which the petitioner had refused to go to her marital home. The married destitute lady cannot be forced to go to her matrimonial home in case there is threat or risk to her life or where the lady is subjected to cruelty in routine manner.

10. The object of maintenance proceeding to prevent vagrancy by compelling those who can provide support to those who are unable to support themselves and who have a moral claim to support. Section 125 CrPC is a measure of Social Justice and is specially enacted to protect women and children. It provides a speedy remedy to deserted and neglected wife and children.

11. In the present case, the marriage between Babi Devi and Upendra Kumar is not in dispute. It is also not in dispute that wife and children are not living with the husband. It also stands

admitted that the husband is in Government employment and is having income from salary. The wife has alleged that her husband invariably coerced her and her two sons aged about 5 and 3 years. In my view, the Court below ought to have considered these aspects before rejecting the application for interim maintenance.

12. Keeping the facts and circumstances of the case in mind, I set aside the impugned order dated 03.09.2014 passed by the learned Principal Judge, Family Court, Nalanda at Bihar Sharif and remit the matter back to him to decide the prayer of the petitioner for interim maintenance afresh in the light of the observations made hereinabove.

13. The application stands allowed.

(Ashwani Kumar Singh, J.)

Kanchan/-

U		T	
---	--	---	--