

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.722 of 2016

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1. Gulam Ali son of Dil Mohammad resident of Village- Rasulur, Police Station- Rasulpur, District- Saran at Chapra.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Raushana Begam wife of Gulam Ali resident of Village- Rasulpur, Police Station- Rasulpur, District- Saran at Chapra.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Narendra Kumar
For the Respondent/s : Mr. Sri Narendra Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

3 06-02-2017 Let the defect as pointed out by the Stamp Reporter be ignored.

2. Heard learned counsel for the parties.

3. The petitioner, who is the husband of Opposite party No.2, has questioned a judgment and order dated 11.02.2016 passed by the learned Principal Judge, Family Court, Saran at Chapra in Maintenance Case No. 146 of 2012, whereby he has directed payment of a sum of Rs. 5,000/- as monthly maintenance allowance to Opposite party No.2, from the date of the filing of the case.

4. Learned counsel for the petitioner has submitted that it is Opposite party No.2, has refused to live with the petitioner and, therefore, she is not entitled for any maintenance allowance under Section 125 of the Code of



Criminal Procedure, 1973(hereinafter referred to as the **Code**). He has secondly, submitted that the amount ordered to be paid monthly allowance to Rs. 5,000/- is excessive considering the status of the petitioner and his earnings.

5. I am not convinced with any of the submissions in view of the admitted facts. According to his own case, petitioner has contracted a second marriage.

6. Learned counsel for the petitioner has submitted that under Muslim Personal Law second marriage is permissible and on that basis, the Opposite party No.2 could not have refused to live with the petitioner.

7. Explanation to sub-section (3) of Section 125 of the Code reads thus:-

“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.”

8. The said explanation does not lay down any distinction among the persons belonging to different religions/faith. It provides that if a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to just ground for his wife’s refusal to live with him. If it is an admitted fact that the petitioner has



contracted a second marriage, plea that since the Opposite party No.2 has refused to live with the petitioner and, therefore, she is not entitled for monthly maintenance allowance under Section 125 of the Code cannot be accepted.

9. So far as second submission is concerned, this is not in dispute that the petitioner is earning well and the amount of Rs. 5,000/-, which have been directed to be paid by him to Opposite party No.2 as monthly maintenance allowance cannot be said to be excessive.

10. I do not find any merit in this application, which is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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