

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.328 of 2014

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1. Anil Yadav Son of Parmeshwari Yadav R/o Village - Arar, P.O. - Arar,
P.S. - Gwalpara, District - Madhepura

.... Petitioner/s

Versus

1. The State of Bihar
2. Ranju Devi D/o Bishundeo Yadav R/o Village + P.O. - Anandpura, P.S. -
Udakishunganj, District - Madhepura

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sharda Nand Mishra, Advocate
For the Respondent/s : Mr. Md. Fahimuddin(App)
For O.P. No.2 : Mr. Pawan Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL JUDGMENT AND ORDER

9 07-03-2017 Heard learned counsel for the parties.

2. By a judgment and order, dated 28.01.2014,
passed in Matrimonial (Divorce) Case No. 471 of 2011,
learned Principal Judge, Family Court, Madhepura, decreed,
on contest, a matrimonial suit filed by the petitioner under
Section 13 of the Hindu Marriage Act, 1955 in his favour and
thereby dissolved the marriage solemnized between the
petitioner and Opposite party No.2, on the ground of *adultery*
committed by Opposite party No.2.

3. One of the issues, which was framed by the
Court below in the said Matrimonial(Divorce) suit was :-

"Whether petitioner Anil Yadav is entitled to get a
decree of divorce from Opposite party No.1 (ex) on the



ground of *adultery* committed by Opposite party No.1 with Opposite party No.2”.

4. Though this was not an issue in the said divorce suit as to whether Opposite party No.2 was “living” in *adultery*, learned Principal Judge, Family Court, recorded a finding in his judgment that though Opposite party No.2 had lived in *adultery* with a person , she was not living in *adultery* with him.

5. There was another issue framed in the said divorce suit, i.e., as to whether Opposite party No.2 had left her *Sasural* (in-laws’ place) without the consent of her husband and out of her own will which too has been decided in favour of the petitioner by the Court below with the finding that Opposite party No.2 had left her in-laws’ place at her own will.

6. On the same day when learned Principal Judge, Family Court passed the decree of resolution of marriage, i.e., on 28.01.2014, by a separate judgment and order passed in Miscellaneous (Maintenance) Case No. 109 of 2011, he has allowed maintenance at the rate of Rs. 1500/- per month to be paid by the petitioner to Opposite party No.2, under Section 125 of the Code of Criminal Procedure, 1973 (Hereinafter referred to as the **Code**).

7. In the present criminal revision application filed



under Section 19 (4) of the Family Court's Act, the petitioner has challenged the judgment and order, dated 28.01.2014 passed by learned Principal Judge, Family Court, Madhepura, dated 29.08.2014, whereby monthly maintenance under Section 125 of the Code as indicated above, has been allowed in favour of Opposite party No.2.

8. To assail the impugned order, dated 28.01.2014, learned counsel appearing on behalf of the petitioner has submitted that after decree of divorce having been granted on the ground of *adultery*, the Court below ought not to have allowed maintenance under Section 125 (1) of the Code, in view of the clear bar under Sub-Section (4) of Section 125 of the Code. He has secondly, submitted that the records of the case suggest that Opposite party No.2 had refused to live with the petitioner out of her own will and for that reason also, she was not entitled for maintenance under Section 125 of the Code.

9. Sub-Section 4 of Section 125 of the Code is the only statutory provision, which requires consideration for adjudication of the present dispute, which reads thus:-

*"Section 125. Order for maintenance of wives, children and parents.- (1) ** ** **

*(2) ** ** ** **

*(3) ** ** ** **

(4) No Wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she



refuses to live with her husband, or if they are living separately by mutual consent”.

10. It is evident on close reading of Sub-Section 4 of Section 125 of the Code as quoted above, that a wife shall not be entitled to receive an allowance or maintenance or interim maintenance and the expenses of proceeding, as the case may be, if she is “living in adultery”. A wife while taking recourse of Sub-Section (4) of Section 125 of the Code cannot be denied such maintenance on the basis of proof of an Act or stray Acts of adultery. The word “living” shows that there must be continuous process of the wife living in *adultery* so as to disentitle her from the benefits under Section 125 of the Code for her maintenance. Benefit of maintenance and other allowances under Section 125(1) of the Code may also be disallowed, if, without any sufficient reason, a wife refuses to live with her husband, or if they are living separately by mutual consent.

11. In order to appreciate the controversy involved in the present case, it will be useful to take brief account of the facts, which are not in dispute.

12. I may, at the outset, however, point out that any act subsequent to dissolution of marriage by a decree of divorce will not attract Sub-Section (4) of Section 125 of



the Code. The expression "wife" in the said Sub-section cannot have extended meaning of including a woman, who has been divorced. This is for the simple reason that question of *adultery* would arise only if there is relationship of husband and wife. Similarly, there will be no question of wife refusing to live with her husband or the wife and husband living separately by mutual consent, there being no requirement for them to live together. There would be no occasion for a woman to live with her husband after dissolution of marriage. Apparently, thus, Sub-Section (4) Section 125 of the Code in relation to events subsequent to the divorce. This aspect, may not be directly in issue for the purpose of present proceeding, since in this case the decree of dissolution of marriage has been passed on the ground of *adultery* on the same day when application filed on behalf of the Opposite party No.2 under Section 125 of the Code has been allowed by the order, which is impugned in the present criminal revision application.

13. The facts, which are not in dispute are that petitioner and Opposite party No.2 were married in July, 2010, according to Hindu rites and customs. The marriage between the petitioner and Opposite party No.2 was not going on well from the very beginning. Sometimes in the year 2011, the Opposite party No.2 went missing from the



house of the petitioner. The father of Opposite party No.2 lodged an F.I.R. against the petitioner alleging killing of the Opposite party No.2 for non-fulfillment of demand of dowry and thereby making out an offence punishable under Section 304B of the Indian Penal Code. Subsequently, the Opposite party No.2 was recovered from the house of one Vakil Paswan on 18.08.2011. She admitted in her deposition under Section 164 of the Code that she used to live with said Vakil Paswan since before her marriage. She also said in her statement under Section 164 of the Code that she desired to live in her '*maike*'.

14. The Matrimonial (Divorce) case was filed by the petitioner in the year 2011. It seems Opposite party No.2 also filed her maintenance case under Section 125 of the Code thereafter, giving rise to Miscellaneous (Maintenance) Case No. 109 of 2011.

15. In the background of these admitted facts, the point, which requires to be adjudicated upon is as to whether bar under Sub-Section (4) of Section 125 of the Code will operate or not.

16. As has already been indicated above, stray incidents of adultery by a wife may not be a ground for refusal of maintenance under Section 125 of the Code. This aspect is to be taken into account in the present set of



facts and circumstances of the present case where Opposite party NO.2, when found missing from the matrimonial house resulted into lodging of the First Information Report under Section 304B of the Indian Penal Code against the petitioner and his family members and Opposite party No.2 was finally recovered from the house of a stranger, i.e., Vakil Paswan. Statement of Opposite party No.2 recorded under Section 164 of the Code in the said Gwalpara P.S. case No. 38 of 2011 was proved before the Court below in the divorce case as well as maintenance proceeding. Upon seeing the records of the case, I do not find any evidence adduced on behalf of the Opposite party No.2 in the proceeding before the Court below that there existed sufficient reason for her to leave her matrimonial house without informing either the petitioner or his parents or her own family members.

17. There is ample evidence on record to suggest that she had left the matrimonial house on her own. After leaving matrimonial house, she had lived with the said Vakil Paswan. Living with Vakil Paswan in the facts and circumstances and in the background of the evidence adduced before the Court below, the Court below has recorded specific finding that Opposite party No.2 had lived in adultery with said Vakil Paswan. It is evident, thus, that



after having left matrimonial house, Opposite party No.2 was found to be living in adultery with said Vakil Paswan, upon recovery by the police. The Opposite party No.2, by leaving her matrimonial house in the manner as discussed above, and staying with said Vakil Paswan proves that she refused to live with the petitioner without any sufficient reason.

18. Considered as above, I am of the view that Opposite party No.2 ought not to have been held entitled for allowance for maintenance, there being enough materials on record attracting provision under Sub-Section (4) of Section 125 of the Code. It is Opposite party No.2 who refused to live with the petitioner by taking unilateral decision of leaving her matrimonial house and voluntarily staying in the house of one Vakil Paswan as indicated above.

19. Considering the above, this application deserves to be allowed. The impugned order dated 28.01.2014 passed in Miscellaneous (Matrimonial) Case No. 109 of 2011 by learned Principal Judge, Family Court, Madhepura, is hereby, set aside.

20. This application is allowed, accordingly.

(Chakradhari Sharan Singh, J)

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