

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.434 of 2002

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Ashok Kumar, Son of Shri Brahmdeo Gope, resident of Village-Maranpur, Gaya,
P.S.-Civil Lines, Gaya, District-Gaya.

.... Opposite Party/Petitioner

Versus

Vina Rai @ Bachi Kumari, Daughter of Shri Baleshwar Singh, resident of Village-
Lachhubigha, P.O.-Khukhari, P.S.-Atari, District-Gaya.

.... Applicant/Opposite Party

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Appearance :

For the Petitioner : Mr. S.S. Dwivedi, Sr. Adv.

Mr. R.K. Dubey, Adv.

Mr. Parth Gaurav, Adv.

For the Opposite Party : Mr. N.K. Agrawal, Sr. Adv.

Mr. D.N. Tiwary, Adv.

For the State : Mr. Parmeshwar Mahta, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT & ORDER

Date: 11-12-2017

Heard learned Senior Counsel for the petitioner,
learned Counsel for the opposite party and learned Additional
Public Prosecutor for the State.

2. The petitioner, being aggrieved by an order, dated
15.04.2002, passed by the learned Judicial Magistrate, Ist Class,
Gaya, in Maintenance Case No. 87 of 1990 (Trial No. 13 of 2002),
awarding the maintenance @ Rs. 500/- per month to his wife, with



effect from 15.12.1990, has preferred the present criminal revision application under Sections 397 and 401 of the Code of Criminal Procedure (*in short 'the Cr.P.C.'*).

3. Learned Senior Counsel, appearing on behalf of the petitioner, submits that, in fact, the wife (opposite party) of the petitioner was living adulterous life and a child was also born out of that relationship. The husband (petitioner) had filed a divorce case, bearing Divorce Case No. 20 of 1990, but the same was dismissed *vide* order, dated 13.07.1998. Against the said judgment, the petitioner preferred first appeal before this Court, bearing First Appeal No. 524 of 1998, in which this Court *vide* judgment, dated 19.05.2017, granted decree of divorce in favour of the husband (petitioner), holding that she lives adulterous life and the child born to her was not found fathered by the petitioner on the basis of the result of the paternity test. However, the Court directed the wife (opposite party) to approach appropriate forum, under Section 25 of the Hindu Marriage Act, for permanent alimony. The wife (opposite party) of the petitioner preferred maintenance case before the court below after filing of the divorce case by the husband and after passing of the order, dated 31.07.2002, the husband, as directed, was regularly paying the maintenance amount till the passing of the judgment in the aforesaid first appeal. Submission



on behalf of the petitioner is that under Section 125 of the Cr.P.C., the wife, living in adultery, is not entitled for the maintenance.

4. Learned Counsel, appearing on behalf of the opposite party, concedes to the point of law.

5. The issue is very short one in the present matter as to whether the opposite party is entitled for maintenance in view of the judgment passed in First Appeal No. 524 of 1998.

6. Having considered the rival submissions advanced on behalf of the parties and on perusal of the record, the Court is of the view that prior to filing of a petition, under Section 125 of the Cr.P.C., by the wife, the husband had already filed a divorce suit on the ground of adultery alleging that the wife is in relationship with some other persons, though the divorce suit filed by the husband was dismissed, but in the first appeal, it was decreed in favour of the husband. A child born to the wife was also not found fathered by the husband in view of the result of the paternity test. Sub-Clause (4) of Section 125 of the Cr.P.C. categorically contains provision that wife is not entitled to receive any allowance of maintenance from her husband under this provision, if she is living in adultery or not living with the husband without having any sufficient reason. In the present case the wife was found to be living in adultery, so she is not entitled for the maintenance



allowance under the provision of Section 125 of the Cr.P.C.

7. Hence, the impugned order, dated 15.04.2002, passed in Maintenance Case No. 87 of 1990, is, hereby, set-aside.

8. This application, accordingly, stands allowed.

(Arun Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.12.2017
Transmission Date	15.12.2017

