

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.967 of 2014

Arising Out of PS. Case No.- Year- Thana- District- Katihar

=====

Bela Soren Wife of Vishnu Kant Kishku, d/o Late Prabhu Nath Soren,
resident of village- Kaliganj, Police Station- Manihari, District- Katihar
... .. Petitioner

Versus

1. The State of Bihar
2. Vishnu Kant Kishku, Son of Narayan Kishku resident of village-
Kokritari, P.O.- Kakwara, Via Banka, P.S. and District- Banka
... .. Respondents

=====

Appearance :

For the Petitioner : Mr. Jibendra Mishra
For the State : Mr. NAVIN KR. PANDAY (APP)
For Opposite Party No.2: Mr. Madan Mohan Prasad

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 24-07-2017

Heard learned Counsel for the petitioner, learned Counsel appearing on behalf of the Opposite Party No. 2 and learned Additional Public Prosecutor representing the State of Bihar.

2. The petitioner is aggrieved by an order, dated 18.07.2014, passed by learned Additional Principal Judge, Family Court, Katihar, in Maintenance Case No. 110 of 2006, whereby he has rejected an application filed by the petitioner, under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') for allowing monthly maintenance allowance at the rate of Rs. 4,000/-.

3. From the impugned order, I find that the learned Court below has refused to grant the petitioner monthly



maintenance allowance on the sole ground that when this petitioner claimed to have married the Opposite Party No. 2 in the year 2006, the Opposite Party No. 2 was already married since 1995 and was having children out of that wedlock. The learned Court below has recorded, in the impugned order, that since the petitioner and her father did not take trouble to know the whereabouts of the Opposite Party No. 2, who was already married, the petitioner cannot claim herself to be the legally wedded wife of Opposite Party No. 2. Learned Court below has recorded that the petitioner, being the second wife of Opposite Party No. 2, was not entitled to maintenance allowance to be paid by the Opposite Party No. 2.

4. From the materials on record, what has emerged to be admitted is that Opposite Party No. 2 did not disclose to the petitioner or her father that he was already married. He had concealed this fact from the petitioner and did not disclose about his earlier marriage either before the petitioner or her father. There is sufficient evidence on record to support this fact.

5. Learned Counsel for the petitioner, in that background, has referred to Supreme Court's decision, in the case of **Badshah v. Urmila Badshah Godse and Another**, reported in (2014) 1 SCC 188, wherein the Supreme Court has



held that since the petitioner was kept in dark about first marriage of respondent no. 2, she cannot be denied benefit of Section 125 of the Code. Paragraph 13.2 of the said decision is relevant for the said purpose, which is being re-produced hereinbelow:

“13.2. Secondly, as already discussed above, when the marriage between Respondent No. 1 and Petitioner was solemnized, the Petitioner had kept the Respondent No. 1 in dark about her first marriage. A false representation was given to Respondent No. 1 that he was single and was competent to enter into martial tie with Respondent No. 1. In such circumstances, can the Petitioner be allowed to take advantage of his own wrong and turn around to say that Respondents are not entitled to maintenance by filing the petition under Section 125, Code of Criminal Procedure as Respondent No. 1 is not "legally wedded wife" of the Petitioner? Our answer is in the negative. We are of the view that at least for the purpose of Section 125 Code of Criminal Procedure,



Respondent No. 1 would be treated as the wife of the Petitioner, going by the spirit of the two judgments we have reproduced above. For this reason, we are of the opinion that the judgments of this Court in Adhav and Savitaben cases would apply only in those circumstances where a woman married a man with full knowledge of the first subsisting marriage. In such cases, she should know that second marriage with such a person is impermissible and there is an embargo under the Hindu Marriage Act and therefore she has to suffer the consequences thereof. The said judgment would not apply to those cases where a man marries second time by keeping that lady in dark about the first surviving marriage. That is the only way two sets of judgments can be reconciled and harmonized.

6. The Opposite Party No. 2, on his own, is present in Court and he has agreed that he shall pay to the petitioner maintenance allowance at the rate of Rs. 4,000/- per month.

7. In view of the clear decision of the Supreme Court, in the case of **Badshah** (supra), I hold that the petitioner is



entitled for monthly maintenance allowance under Section 125 of the Code.

8. The Opposite Party No. 2 is a Class-III employee, under the State of Jharkhand, in the Secretariate. His monthly income is, approximately, Rs. 40,000/-, according to him.

9. In the facts and circumstances, I hold that the petitioner is entitled for maintenance allowance right from the date of filing of the application under Section 125 of the Code.

10. The Court is awarding the monthly rate of maintenance allowance, as suggested by the petitioner herself.

11. In the facts and circumstances of the case, I direct that from the date of application till the date of passing of the impugned order, the Opposite Party No. 2 shall be required to pay arrears at the rate of Rs. 3,000/- per month and from the date of passing of the impugned order by the learned Court below at the rate of Rs. 4,000/- per month.

12. The arrears of maintenance allowance shall be calculated accordingly and paid by Opposite Party No. 2 to the petitioner within six months from today.

13. Accordingly, the impugned order, dated 18.07.2014, passed in Maintenance Case No. 110 of 2006, is set aside. This application stands allowed.



14. Needless to say that the petitioner shall have the liberty to apply for enhancement of maintenance allowance in accordance with the provisions under Section 127 of the Code by making application before the learned Court below.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	02-08-2017
Transmission Date	02-08-2017

