

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Revision No.844 of 2016**

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

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Kalimuddin Khan Son of Md. Moinuddin Khan Resident of Mohalla- Nai Bazar, P.S. Bhagwan Bazar, District Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ismat Parveen Daughter of Md. Shahabuddin khan Resident of Village- Gurdahan Khurd, P.S manjhi, District Saran.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Rajesh Kumar

For the Respondent/s : Mr. SRI BRAJENDRA NATH PANDEY

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH**

**ORAL JUDGMENT**

**Date : 06-03-2018**

This criminal revision application has been filed putting to challenge the judgment and order, dated 25.06.2016, passed by the learned Principal Judge, Family Court, Saran at Chapra in Maintenance Case No. 25 of 2002, whereby exercising power under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), learned Court below has directed the petitioner to make payment of a sum of Rs. 18,000/-(Eighteen thousand) per month with effect from the date the Opposite party No.2 started getting salary of Rs. 12,000/- per month in her capacity as Panchayat Teacher.

2. The application under Section 125 of the Code was



filed by the Opposite party No.2 on 13.08.2002. Considering the cost of living at that point of time, the Court below directed the petitioner, by the impugned order, to pay a sum of Rs. 8,000/- per month for maintenance to Opposite party No.2 and for education and health of their son, till the month of December 2006. In the month of December 2006, the Opposite party No.2 had joined as Panchayat Teacher and was getting a salary of Rs. 8,000/-. Considering her salary and the cost of living taking into account the status of the petitioner, the Court below directed payment of Rs. 6,000/- per month from the month of January 2007 to month of December 2010. From January 2011, the petitioner has been made liable to pay a sum of Rs. 18,000/- per month to the Opposite party No.2. The Court below has also made provision for enhancement of the maintenance amount proportionate to the increment of the salary of the petitioner, as well.

3. What is not in dispute as is evident from the impugned judgment and order and the materials on record that the petitioner and Opposite party No.2 were married to each other. Whereas the Opposite party No.2 had asserted that the marriage between the petitioner and the Opposite party No.2 was solemnized on 10.12.1996, the petitioner asserted that they



were married on 10.12.1986. The factum of the marriage between the two was never in dispute. Though there is assertion made by the petitioner in his reply before the Court below that the petitioner had pronounced *talak* but the respondent refused to put signature on the *talaknama*, the Opposite party No.2 disputed the case of *talak* developed by the petitioner. On the ground that the petitioner had already divorced the Opposite party No.2, relying on Section 3 of Muslim Women ( Protection of Rights on Divorce) Act, 1986, the petitioner had questioned the very maintainability of a petition under Section 125 of the Code. The objection so raised was rejected by the learned Court below by an order, dated 24.11.2005 itself. No such plea, however, has been taken in the present proceeding inasmuch as no ground has been set up in the criminal revision application on the question of maintainability of the application filed by the Opposite party No.2 before the Court below. There is, thus, no dispute over the factum of marriage between the petitioner and the Opposite party No.2. The plea of the petitioner that he had divorced the Opposite party No.2 has been disputed by the Opposite party No.2. In any view of the matter, this is not the case of the petitioner that the Opposite party No.2 has re-married. The petitioner had also set up a case before the Court



below that he had obtained decree of divorce from the Court of learned Sub Judge-I, Patna and for that reason also he was not liable to pay the maintenance amount under Section 125 of the Code. It transpires from the impugned order that an application filed by the Opposite party No.2 under Order-IX Rule 13 of the Code of Civil Procedure, 1908, for setting aside the *ex parte* decree of divorce was pending before the concerned Court.

4. Learned Court below, however, has recorded in the impugned order that even if it was presumed that there was divorce by the petitioner, he could not escape the liability of payment of maintenance there being no case that the Opposite party No.2 had re-married, relying on Supreme Court's decision in case of ***Daniel Latifi and another Vs. The Union of India*** reported in ***(2001)7 SCC 740*** and subsequent decision in case of ***Khatoon Nisa Vs. State of Uttar Pradesh and others*** reported in ***2014(12) SCC 646***.

5. The Court below, thereafter proceeded to consider the case of the contesting parties on the point as to whether the petitioner, though having sufficient means had neglected or refused to maintain the Opposite party No.2 being his wife and if so what amount of maintenance she was entitled to.

6. On the basis of the evidence adduced in the



proceeding under Section 125 of the Code, the Court below noticed that the Opposite party No.2 was residing at her parental house ever since 11.06.2000 without having any source to maintain herself and her minor son who was studying in International Public School, Patna. At the time of filing of the application for maintenance before the Court below, admittedly, she was not engaged in any kind of employment and was in search of her livelihood. Only in the year 2006, she got a job of Panchayat Teacher on fixed pay as remuneration. The Court below noticed the fact that the petitioner was, on the other hand, holding a respectable post and earned handsome salary as an Officer in the Central Excise Department of the Government of India. Noticing the status of the petitioner vis-a-vis that of the Opposite party No.2, the Court below concluded that the petitioner had failed to maintain the Opposite party No.2 and their minor son and that the Opposite party No.2 was not able to maintain herself and live in reasonable comfort, considering her status and the mode of the life she was used to lead, when she lived with her husband.

7. On the date of passing of the impugned order, the Opposite party No.2 was getting fixed salary to the tune of Rs. 12,000/- per month as Panchayat Teacher and a plea was



accordingly taken on behalf of the petitioner before the Court below that since the Opposite party No.2 was able to maintain herself, she was not entitled to any maintenance either under the provision of Section 125 of the Code or under the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986. Learned court below responding to the said objection raised on behalf of the petitioner referred to this Court's decision in case of ***Shamima Faruqui Vs. Shahid Khan*** reported in ***2015(3) PLJR 58*** and accordingly concluded that a wife can be said to be able to maintain herself if she is in a position to maintain standard of living, which is neither luxurious nor penurious but what is consistent with the status of a family, referring to and relying on Supreme Court's decisions in case of ***Chaturbhuj Vs. Sita Bai*** reported in ***(2008) 2 SCC 316*** and in case of ***Bhagwan Vs. Kamla Devi***( ***AIR 1975 SC 83***).

8. After having held so, learned court below has elaborately considered the amount, which the petitioner was earning as salary in his capacity as an Officer in the Central Excise Department, Government of India. The Court below noticed that the gross pay of the petitioner was more than Rs. 70,000/- and he had to look after his parents as well as his



second wife though he was getting net pay of Rs. 51,200/- after G.P.F. deduction of Rs. 10,000/-. On the other hand the Opposite party No.2 was getting only Rs. 12,000/- as fixed salary as on the date of the passing of the order for maintaining herself and the minor son. What I find from the order of the Court below that it has taken into account the amount which the Opposite party No.2 had been earning in the year 2006, when she was first appointed as Panchayat Teacher which was a sum of Rs. 8,000/- per month as fixed salary. The reason for fixing the maintenance amount as noted above, has been elaborately given in paragraph 20 of the judgment and order impugned, which is being reproduced herein below:-

*“20. Since, the maintenance petition is filed on 13.08.2002 and on that very day the petitioner was unemployed and the cost of living was not so high, hence I think that Rs. 8,000/- (Eight thousand) per month for maintenance of the petitioner as well as for education and health of her son will sufficient and the opposite party is under obligation to pay Rs. 8,000/- (Eight thousand) per month from the date of filing of the case on 13.08.2002 till the month of December, 2006, the date on which the petitioner joined as a teacher in Bihar Govt. From the month of January, 2007 to the month of December, 2010 since the petitioner was getting salary of Rs. 8,000/- (Eight thousand), hence the opposite party will be under obligation to pay Rs. 6,000/- (six thousand) per month from the month of January, 2007 to the month of December, 2010 and as stated above from the month of January, 2011 till date and in future the Opposite party will pay Rs. 18,000/- (Eighteen thousand)n per month to the petitioner. The maintenance amount will be paid by the Opposite party of a month in first week*



*of next month. In order to avoid difficulty for enhancement or remission or alteration in maintenance amount I think that it will be proper to enhance the maintenance amount to the petitioner at the half of the percent of increment of the salary of the Opposite party. For example if the salary of the Opposite party is increased at the rate of 3% of the maintenance amount, that is on Rs. 18,000/-. It is needless to say that if the opposite party has paid any amount to the petitioner from the date of filing of the case that amount shall be set off and adjusted from the earlier amount of maintenance to be paid by the Opposite party to the petitioner.”*

9. The reasoning as to why the Opposite party No.2 should be allowed Rs. 18,000/- per month as maintenance amount has been given in paragraph 19 of the impugned judgment, which is also noted herein below:-

*“19. I have heard on the point of quantum of maintenance to the both parties and perused the pay slip, which is filed by the opposite party. The pay slip shows that the date of increment of the pay is in the month of July and the pay slip is for the month of May. Admittedly, the contribution of the GPF is income of the Opposite party, which will be refunded to the contributory employee. It has also come in the evidence that the Opposite party has to maintain his second wife and old father. In view of the above facts, to may mind the total expenditure to be incurred by the petitioner along with expenses to meet out the education as well as health to the son of the petitioner is more than Rs. 30,000/- per month, which is required to the petitioner. Since, the petitioner is getting Rs. 12,000/- per month hence it will be just and proper, if the opposite party is directed to pay Rs. 18,000/- per month to the petitioner from the date, when she was allowed Rs. 12,000/- per month as salary of a teacher.”*



10. The reasoning assigned by the Court below for fixing the quantum of maintenance amount in my view, is sound and suffers from no infirmity.

11. Learned counsel appearing on behalf of the petitioner has, however, asserted that the Court below has miserably failed to appropriately consider and apply the Supreme Court's decision, which have been referred to in the impugned order on the question as to whether the Opposite party No.2 was able to maintain herself with her earnings as Panchayat Teacher. A plea has also been taken that admittedly the Opposite party No.2 had refused to accept the cheque amount of Rs. 1,53,000/-, which the petitioner had deposited towards her *Dein Mehar* for her sustenance to support the contention that she was able to maintain herself. It is also the plea on behalf of the petitioner that there was no material available on record to show that the Opposite party No.2 was leading a life of penury. When the matter was take up on 21.02.2017, following order was passed:-

*“The petitioner is, admittedly, a gazetted officer, working under the Central Excise Department. He is aggrieved by an order, dated 25.06.2016, passed by learned Principal Judge, Family Court, Saran, at Chapra, in Maintenance Case No. 25 of 2002, whereby he has allowed monthly maintenance allowance in favour of Opposite party No.2 and her son at the rate of Rs. 18,000/- per*



*month with effect from January, 2011, in exercise of power under Section 125 of the Code of Criminal Procedure, 1973.*

*The order is being assailed mainly on the ground that Opposite party No.2 is earning an amount of Rs. 12,000/- per month in her capacity as Panchayat Teacher, working in some School at Chapra and, therefore, it cannot be said that she is living in penury. The said amount has been allowed for the maintenance of Opposite party No.2 and son of the petitioner and the Opposite party No.2.*

*Considering the status of the petitioner, who is said to be serving as a gazetted officer in Excise Department of the Central Government, I am of the tentative view that the quantum of monthly maintenance allowance for maintenance of Opposite party No.2 and the child is not adequate and needs to be substantially enhanced.*

*Let the petitioner file his response within four weeks from today.*

*List this case, under the same heading, on 21<sup>st</sup> March, 2017."*

12. A reply has been filed in the present proceeding on behalf of the petitioner to the counter affidavit filed on behalf of Opposite party No.2. It has been stated, *inter alia*, in the said reply that the son of the petitioner and Opposite party No.2 has attained majority and is, therefore, not entitled to any maintenance. It has also been stated that the Opposite party No.2 is now earning a sum of Rs. 18,000/- in a month in her capacity as Panchayat Teacher.

13. I find that the learned Court below has rightly



invoked the ratio laid down by the Supreme Court in case of ***Khatton Nisa Vs. State of Uttar Pradesh and others*** (supra) to maintain the claim of the Opposite party No.2 of her maintenance on the grounds mentioned under Section 125 of the Code.

14. Learned Court below has rightly followed the law laid down by the Supreme Court in case of ***Jasbir Kaur Sahgal Vs. District Judge Dehradun and others*** reported in (1997) 7 SCC 7 and this Court's decision in case of ***Shamima Faruqui Vs. Shahid Khan*** (supra). The Supreme Court observed in case of ***Jasbir Kaur Sahgal Vs. District Judge Dehradun*** (supra), that a sustenance would not mean and can never be allowed to be meant a mere survival. The Supreme Court categorically held that a woman is entitled to lead a life in a similar manner as she would live in the house of her husband and that is where a status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. In no uncertain terms, the Supreme Court has held that as long as the wife is held entitled to grant of maintenance within the parameters of Section 125 of the Code, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home.



15. The quantum of maintenance amount, which has been fixed by the Court below in view of the reasons assigned in the order impugned, can in no way be said to be unreasonable on the higher side. As a matter of fact, the Court below has tried to strike a balance between the interest of the parties while undertaking the exercise of fixing the quantum of maintenance, as is noticed from the reasons assigns, relevant portion of which have been quoted above.

16. I do not find any reason to interfere with the judgment and order impugned. I do not find any merit in this application, accordingly.

17. This application is, accordingly, dismissed.

**(Chakradhari Sharan Singh, J)**

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