

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.514 of 2018

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

Sachin Kumar Gupta, S/o Sri Sunil Kumar Gupta, resident of Pakki Goraiya,
P.S. Khajekallan, District-Patna

... .. Petitioner/s

Versus

Smt. Archana Devi, W/o Sri Sachin Kumar Gupta, D/o Sri Shiv Shankar Pd.,
resident of Noorani Bagh Colony 5/B, P.S. Alamganj, P.O. Gulzar Bagh,
District-Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Tilak Sao

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 02-12-2019

The present petition has been filed for quashing the order dated 12.03.2018 passed in Maintenance Case No. 56/M/17 by the learned Principal Judge, Family Court, Patna, whereby and whereunder the petition for grant of maintenance under Section 125 Cr.P.C. has been allowed and the petitioner has been directed to pay a sum of Rs. 4,000/- per month to the opposite party no. 2 apart from payment of a sum of Rs. 10,000/- by way of litigation cost.

At the outset, it may be pointed out that though the petitioner has annexed the rejoinder filed by him to the petition of the Opposite Party under Section 125 of the Code of Criminal Procedure but it appears that unscrupulously he has failed to annex the petition filed by the opposite party under Section 125 Cr.P.C. before the learned court below, as such this Court is of the view that the present petition is fit to be dismissed being



suffering from the vice of “**suppressio very, suggestio falsi**”, however, since this Court does not intend to prejudice the rights of the parties, it deems expedient to decide the present petition on merits.

The brief facts of the case as per the impugned order dated 12.03.2018 is that the Opposite Party is the legally married wife of the petitioner herein and on 05.01.2014, a female child was born out of the wedlock. It appears that on account of matrimonial dispute, the Opposite Party and her daughter have been constrained to live separately and they have got no source of income for their livelihood as also the Opposite Party is dependent on his father, whose monthly income is not sufficient to provide succor to the Opposite Party and her child, hence the Opposite Party had filed a petition under Section 125 Cr.P.C. for grant of maintenance.

The learned counsel for the petitioner has submitted that the petitioner is a daily wage employee and hardly earns a sum of Rs. 8,000/- per month, hence the amount of maintenance awarded by the learned court below is excessive.

I have heard the learned counsel for the parties and I find from the impugned order dated 12.03.2018 that there is no infirmity in the same and the relationship of husband and wife



in between the petitioner and the Opposite Party has been proved. This Court further finds that a meager sum of Rs. 4,000/- has been directed to be paid by the petitioner to the Opposite Party i.e. his wife as also to his daughter (Rs. 2,500/- towards maintenance of the wife of the petitioner i.e. the Opposite Party herein and Rs. 1,500/- towards maintenance of the daughter of the petitioner).

At this juncture, it would be relevant to refer to a judgment rendered by the learned Three Judges' Bench of the Hon'ble Apex Court, reported in **2018(SCC on-line) SC 1643 (Reema Salkan vs. Sumer Singh Salkan)**, paragraph nos. 13, 14 and 16 whereof are reproduced herein below:-

"13. Be that as it may, the High Court took into account all the relevant aspects and justly rejected the plea of the respondent about inability to pay maintenance amount to the appellant on the finding that he was well educated and an able bodied person. Therefore, it was not open to the respondent to extricate from his liability to maintain his wife. It would be apposite to advert to the relevant portion of the impugned judgment which reads thus:

"79. The respondent during the cross examination has admitted that he too is B.Com, M.A.(Eco.) and MBA from Kentucky University, USA; the respondent is a Canadian citizen working with Sprint Canada and is earning Canadian \$(CAD) 29,306.59 as net Annual Salary. However, he has claimed that he has resigned



from Sprint Canada on 23.11.2010 and the same has been accepted on 27.11.2010 and the respondent since then is unemployed and has got no source of income to maintain himself and his family.

80. In the instant case, the petitioner has filed the case under Section 125 Cr.P.C., 1973 for grant of maintenance as she does not know any skill and specialised work to earn her livelihood i.e. in paragraph 26 of maintenance petition against her husband. However, the respondent husband who is well educated and comes from extremely respectable family simply denies the same. The respondent husband in his written statement does not plead that he is not an able bodied person nor he is able to prove sufficient earning or income of the petitioner.

*81. It is an admitted fact emerging on record that both the parties got married as per Hindu Rights and Customs on 24.03.2002 and since then the petitioner was living with her parents from 10.08.2002 onwards, and the parents are under no legal obligation to maintain a married daughter whose husband is living in Canada and having Canadian citizenship. The plea of the respondent that he does not have any source of income and he could not maintain the wife is no answer as he is mature and an able bodied person having good health and physique and he can earn enough on the basis of him being able bodied to meet the expenses of his wife. In this context, the observation made in **Chander Prakash v. Shrimati Shila Rani, AIR 1968 Del 174** by this Court is relevant and reproduced as under:*



"7.....an able bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in position to earn enough to be able to maintain them according to the family standard. It is for such ablebodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child."

*82. The husband being an ablebodied person is duty bound to maintain his wife who is unable to maintain herself under the personal law arising out of the marital status and is not under contractual obligation. The following observation of the Apex Court in **Bhuwan Mohan Singh v. Meena, AIR 2014 SC 2875**, is relevant:*

"3.....Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short "the Code") was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of



a wife, become a prominent one.

In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created where under she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.

(emphasis applied)

83. The respondent's mere plea that he does not possess any source of income ipso facto does not absolve himself of his moral duty to maintain his wife in presence of good physique along with educational qualification."

14. The view so taken by the High Court is unassailable. Indeed, the respondent has raised a plea to question the correctness of the said view, in the reply affidavit filed in this appeal, but in our opinion, the finding recorded by the High Court is unexceptionable.

16. We, therefore, direct the respondent to pay the enhanced maintenance amount, as determined in



terms of this order, to the appellant within a period of eight weeks from today after duly adjusting the amount already deposited in Court/paid to the appellant till date. The appellant will be entitled to forthwith withdraw the maintenance amount deposited by the respondent in Court, if any. The impugned judgment of the High Court is accordingly modified in the aforementioned terms.”

A bare perusal of the aforesaid judgment rendered by the Hon'ble Apex Court in the case of Reema Salkan (supra) would demonstrate that an able body young man is presumed to be capable of earning sufficient money so as to be able to reasonably maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is equally a well settled law that Section 125 Cr.P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman who left her matrimonial home so that some suitable arrangement can be made by the Court and she can sustain herself as also her children, if there are any, and it is the obligation of the husband to ensure that his wife leads a life in a similar manner as she would have lived in the house of her husband, hence it is the sacrosanct duty of the husband to render her financial support and he cannot take subterfuges to deprive her of the benefit of living with dignity, thus any plea by the



husband that he does not possess any source of income, *ipso facto* does not absolve him of his moral duty to maintain his wife and child.

Having regard to the aforesaid principle of law enunciated by the Hon'ble Apex Court in the case of **Reema Salkan** (supra) as also in the case of **Bhuwan Mohan Singh** (supra) and **Chandar Prakash** (supra), this Court finds from the facts of the present case that the petitioner is under an obligation to maintain his legally wedded wife i.e. the opposite party and the learned Principal Judge, Family Court, Patna, has awarded a meager amount of maintenance of Rs. 4,000/- per month, vide the impugned judgment dated 12.03.2018, which is based on cogent materials and evidence, thus this Court is of the considered view that the maintenance amount so awarded by the learned court below is not excessive, specially keeping in mind the spiraling inflation rate and high cost of living index, prevailing today, hence, the present petition stands dismissed, being devoid of any merit.

(Mohit Kumar Shah, J)

S.Sb/-

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