

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.198 of 2019

Samad Ali @ Abdul Shamad Aged About 33 Years S/O Ahamad Ansari
Resident Of Village- Biseni Kala, P.S.- Rajpur, District- Rohtas.

... .. Petitioner/s

Versus

Nuraisha Khatoon Aged About 31 Years Gender-Female W/O Samad Ali @
Abdul Shamad Resident Of Village- Biseni Kala, P.S.- Rajpur, District-
Rohtas.

... .. Respondent/s

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 28-03-2019

Heard parties.

2. This criminal revision petition has been filed for setting aside the order dated 14.08.2018 passed in Maintenance Case No. 06 of 2013 passed by Principal Judge, Family Court, Rohtas at Sasaram by which the learned Judge Family court has directed for payment of maintenance to Wife-Opposite Party No. 2 Rs. 3000/- per month and sum of Rs. 2000/- per month to the minor daughter Rozzy Khatoon.

3. Opposite Party No. 2 had filed a petition for grant of maintenance inter alia stating therein that marriage between the petitioner and Opposite Party No. 2 was solemnized in the year



2007 according to Mohammedan Law and after marriage Opposite Party No. 2 came to her matrimonial home and from said wedlock a daughter Rozzy Khatoon was born and after birth of female child family of petitioner and petitioner started demanding Rs. 1 Lac and for non fulfillment of said demand Opposite Party No. 2 was subjected to torture and harassment and she was ousted from her matrimonial home and forced to take shelter in her parental home along with her minor daughter.

4. It has been further contended that she has no source of income and is unable to maintain herself, however, petitioner has sufficient source of income and is not maintaining Opposite Party No. 2 (wife) and his minor daughter and as such she has filed the maintenance case, as petitioner is bound to maintain her. Petitioner is employed in ply factory in Mumbai and is getting salary of Rs. 20,000/- per month and as such petitioner has prayed for grant of maintenance of Rs. 3000/- per month for her and sum of Rs. 2000/- per month for her minor daughter.

5. Petitioner had appeared in the Court and an effort was made for reconciliation but the dispute did not resolve and reconciliation failed on 10.12.2015.

6. In support of her claim for maintenance Opposite Party No. 2 had examined herself as PW-1 and Md. Hafiz



Ansari as PW-2 and they were cross-examined by the petitioner at length. Petitioner also examined four witnesses to deny the claim of Opposite Party No. 2. Usman Ansari was examined as Witness No. 1, Mojiboor Rahman was examined as Witness No. 2, Md. Ansari was examined as Witness No. 3 and Samad Ali (petitioner) was examined as Witness No. 4. They were examined and cross-examined by the Opposite Party No. 2 and evidence was closed on 13.04.2018.

7. During course of proceeding a petition for interim maintenance was filed and same was allowed by order dated 28.02.2018 for payment of Rs. 1500/- as interim maintenance but no maintenance was paid by the petitioner to Wife-Opposite Party No. 2, and he did not even pay the cost awarded for seeking unnecessary adjournment. Nuraisha Khatoon (wife Opposite Party No. 2) in her deposition as PW-1 has stated that she was married to petitioner on 13.06.2007 and a daughter was born on 21.09.2009 namely Rozzy Khatoon and thereafter Rs. 1 Lac was demanded from her for construction of house and when said demand was not fulfilled, she was ousted from her matrimonial home in the year 2010 and even she was not allowed to bring her ornaments and since then she is living in her parental home with her mother. She has stated that



petitioner-husband is working in Mumbai and getting salary of Rs. 20,000/- and has also income from land. She has claimed maintenance of Rs. 10,000/- per month so that she could live with her minor daughter with dignity and comfort. She has further stated that petitioner has entered into second marriage. She has further alleged that as she was being assaulted she is not ready to leave with petitioner. She has denied that she has any source of income.

8. PW-2 Hafiz Ansari is father of Opposite Party No. 2 who has supported the case of his daughter for grant of maintenance. He has stated in his cross-examination that since petitioner has solemnized second marriage his daughter is not willing to go there. He has further stated that she was not kept properly in her matrimonial home and was ousted in the year 2010 and since then she is living with him.

9. Petitioner Samad Ali-Husband has deposed as Witness No. 4 and has admitted the factum of marriage and also a daughter being born from the said wedlock. He has admitted that wife-Opposite Party No. 2 is living separately for last nine years with her minor daughter. He has further stated that he is a labourer in cloth mill and earns Rs. 3500/- per month. He has also admitted that he has been convicted by the court of law in a



case filed by Opposite Party No. 2 under Section 498A of the IPC. He has also admitted that he has entered into second marriage.

10. In support of his case three witnesses have been examined on his behalf and Witness No. 3 is father of petitioner and they have supported the defence of petitioner.

11. Considering the evidence on record and after hearing learned counsel for the parties, the Family Court has found that the marriage of petitioner with Opposite Party No. 2 and a daughter born out of the said wedlock is admitted by both the parties. It is also admitted that Opposite Party No. 2 is residing in her parental home since 2010 and she has no source of income as such she is unable to maintain herself whereas petitioner is working in a power-loom factory and is bound to maintain his first wife and his minor daughter. Opposite Party No. 2 has sufficient cause for not living with petitioner as he has entered into second marriage and she was being tortured and assaulted in her matrimonial home and ousted from there in the year 2010. The family Court has held that petitioner has sufficient means and income whereas Wife-Opposite Party No. 2 has no source of income. Petitioner is not maintaining his wife and as such has directed him



to pay Rs. 3000/- per month as maintenance to his wife-
Opposite Party No. 2 and Rs. 2000/- per month to her minor
daughter till she remains unmarried.

12. After hearing learned counsel for the parties and
perusing the order passed by the Family Court as well as
deposition of Opposite Party No. 2, this Court does not find any
error illegality or infirmity in the order passed by the Family
Court.

Accordingly, the present revision petition is dismissed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	03.04.2019
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