

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL REVISION No.499 of 2018

Arising out of PS. Case No.- Year-1111 Thana- District-

Md. Arshad, S/o Late Md. Kalim @ Md. Kalam, Resident of village-Masjid Tola, Turkoli, P.S.-Jokihat, District-Araria

... .. Petitioner/s

Versus

1. The State of Bihar
2. Bibi Shabnam W/o Md. Arshad, D/o Md. Shafique, Resident of village-Palasi, P.S. Palasi, District-Araria

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Md. Naushad Uzzoha
For the Respondent/s : Mr.Sri Satyendra Narayan Singh

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 02-12-2019

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

The present revision petition has been filed against the
judgment and order dated 21.03.2018 passed in Maintenance
Case No. 69/2016 by Sri Ram Prakash, learned Principal Judge,
Family court, Araria whereby and whereunder the learned
Principal Judge has allowed the maintenance case of the
opposite party no. 2 and directed the petitioner to pay Rs.
5,000/- per month to the O.P. No. 2 from the date of judgment.

The brief facts of the case are that the opposite party
no. 2 herein had filed a Maintenance Case bearing Maintenance
Case No. 69 of 2016 before the learned Court of Principal
Judge, Family Court, Araria under Section 125 of the Cr.P.C.,
inter alia stating therein that her marriage with the petitioner had
taken place on 08.06.2012 and thereafter she had continued to
live with her husband at her in-laws place as also was leading
a normal marital life. At the time of marriage, it is alleged that



lot of gifts and dowry was given by the father of the opposite party no. 2 to the petitioner herein. It is further stated in the aforesaid petition that subsequently the petitioner and the in-laws of the opposite party no. 2 started harassing and torturing the petitioner on account of non-fulfillment of the demand for dowry and finally on 04.12.2012 the opposite party no. 2 was thrown out of her matrimonial home whereupon she had filed a written complaint before the Police leading to registration of Araria P.S. Case No. 03 of 2012. It has been further alleged by the opposite party no. 2 in the aforesaid petition that since the petitioner was thrown out of her matrimonial home, she has been leading her life with great difficulty on account of financial constraints, hence it has been prayed by the opposite party no. 2 that since the petitioner is a well settled person and runs a Nursing Home in the district headquarters of Araria as also is having a huge house apart from having huge landed properties, earning a sum of Rs. 70,000/- an odd, the opposite party no. 2 should be paid a sum of Rs. 10,000/- per month by the petitioner herein as maintenance and to the said effect the learned court may pass appropriate orders.

The learned counsel for the petitioner has submitted that since the petitioner and the opposite party no. 2 have been



married as per the Muslim customs, no maintenance, as awarded by the learned court of Principal Judge, Family Court, Araria, could have been directed to be paid by the petitioner to the opposite party no. 2.

I have heard the learned counsel for the petitioner and perused the materials on record as also the impugned judgment dated 21.03.2018 from which it is apparent that the learned court of Principal Judge, Family Court, Araria has not only considered the evidence led by the opposite party no. 2 but has also considered the evidence led by the defence and thereafter has come to a finding that the opposite party no. 2 is the legally wedded wife of the petitioner herein as also she had been driven out of her matrimonial home, hence the petitioner being an able bodied husband is morally and legally bound to take care and maintain his legally wedded wife, thus has directed the petitioner herein to pay a meager sum of Rs. 5,000/- per month by way of maintenance.

Considering the facts and circumstances of the case, this Court finds that there is no infirmity in the impugned order dated 21.03.2018 and the same also does not suffer from any illegality or arbitrariness. As far as the contention of the learned counsel for the petitioner to the effect that since the



marriage of the petitioner and the opposite party no. 2 has been held as per the Muslim customs and law, the maintenance case is not maintainable, this Court finds that the same is required to be only noted for the purposes of being rejected inasmuch as the provisions of the Code of Criminal Procedure, 1973 is applicable *de hors* the religion, caste or creed of any individual citizen of India.

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.

Having regard to the aforesaid principle of law evolved 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 no. 2 and the learned Principal Judge, Family Court, Araria, has awarded a meager amount of maintenance of Rs. 5,000/- per month, vide the impugned judgment dated 21.03.2018, 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.

S.Sb/-

(Mohit Kumar Shah, J)

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	06.12.2019
Transmission Date	06.12.2019

