

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.709 of 2016

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

=====

Deena Nath Singh, S/o Late Banarasi Singh, resident of Village Kalani P.S. Sahebganj, District- Chandauli, U.P. at present Shiv Prasad Nagar Samne Ghat, Road, Nagwa, P.S. Lanka, District Varanasi.

... .. Petitioner

Versus

Devanti @ Hamvanti Devi, W/o Deena Nath Singh, resident of Village-Kalani, P.S. Sahebganj, District- Chandauli,U.P. at present village-Damodarpur, P.S. Chainpur, District- Kaimur at Bhabua.

... .. Respondent

=====

Appearance :

For the Petitioner/s	:	None
For the Respondent/s	:	None

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

7 26-07-2019 None appears on behalf of the petitioner. On the last occasion also none had appeared on behalf of the petitioner and the matter was directed to be posted today as a last indulgence.

On perusal of the record this application is being disposed of on merit.

This revision application has been filed against the order dated 19.4.2016 passed by learned Principal Judge, Family Court, Kaimur at Bhabua in Maintenance Case No. 40 of 2007 whereby and whereunder learned Principal Judge has rejected the petition dated 3.11.2009 filed by the petitioner for cancellation of the earlier order granting maintenance to opposite party-wife.



The fact, in short, is that opposite party-wife has filed Maintenance Case No. 24 of 1992 before the Family Court, Kaimur at Bhabua for her maintenance as she was living in her Maik, which was allowed and Rs.300/- per month was granted as maintenance and subsequently the maintenance amount was enhanced to Rs.2000/- per month by order dated 20.4.2007 passed in Misc.Case No. 02 of 2006. It further appears that opposite party-wife has filed Misc.Case No. 40 of 2009 for realization of arrears of maintenance amount at the rate of Rs.300/- per month and petitioner has filed a petition on 3.11.2009 with a prayer to cancel the earlier order granting maintenance to her. It also appears that opposite party-wife has filed rejoinder to that petition filed by the petitioner.

It appears that learned Family Court vide order dated 19.4.2016 rejected the petition dated 3.11.2009 filed by the petitioner.

Being aggrieved by the above order the present revision application has been filed by the petitioner and the ground for assailing the impugned order is that petitioner has filed a divorce case before the Family Court, Varanasi and divorce decree was passed in favour of the petitioner and the same has been upheld by Hon'ble Allahabad High Court and



also on the point that earlier a complaint case has been filed by opposite party-wife, which led to conviction and sentence of the petitioner but in appeal the same was set aside by Additional Sessions Judge, FTC, Kaimur at Bhabua in Cr.Appeal No. 53 of 1996/25 of 2009 by judgment dated 27.5.2010 but the learned Family Court considering the same has dismissed the petition filed by the petitioner and allowed the petition filed by the opposite party.

None appears on behalf of the petitioner.

On perusal of the records as well as the impugned order it appears that the sole ground for cancellation of the earlier order granting maintenance to the opposite party-wife is that divorce decree was passed in favour of the petitioner and as such there is no relationship of wife and husband between opposite party and petitioner.

Section 125 of Cr.P.C. deals with order for maintenance of wives, children and parents and Explanation (b) to Sub-section (1) of Section 125 Cr.P.C. provides that “wife” includes woman who has been divorced by, or has obtained a divorce from her husband and has not remarried.

In this case there is nothing on the record that after marriage she has remarried with another person and as such



learned Family Court has rightly rejected the petition filed by the petitioner.

The aforesaid view has also been taken by Hon'ble Apex Court in the case of **Gurmit Kaur vs. Surjit Singh @ Jeet Singh : (1996) 1 SCC 39**, in which it has been held that in view of the divorce agreement referred to hereinabove, the marital relations have come to a terminus. By virtue thereof, the respondent had already contracted the second marriage. In other words, the first marriage has been put to an end. The appellant thereby became entitled to claim maintenance and will continue to do so, so long as she remains unmarried and she is unable to maintain herself and accordingly appeal was allowed and the appellant and her minor son were directed to be entitled to the maintenance amount in terms of the order of the learned Magistrate. Further, in the case of **Rohtash Singh vs. Smt. Ramendri and ors : (2000) 3 SCC 180** Hon'ble Apex Court has held that if the divorced wife is unable to maintain herself and if she has not remarried, she will be entitled to maintenance allowance from the person of whom she was once the wife and it has further been held that a woman after divorce becomes a destitute and if she cannot maintain herself or remains unmarried, the man who was, once, her husband continues to be



under a statutory duty and obligation to provide maintenance to her.

In view of above discussions, I find no merit in this application. It is, accordingly, dismissed.

(Vinod Kumar Sinha, J)

spal/-

U		T	
---	--	---	--

