

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.540 of 2016

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

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Md. Aftab Alam son of Md. Rashid, Resident of village Morsanda, P.S. Falka,
District Katihar.

... .. Petitioner/s

Versus

State Of Bihar and Anr

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Jitendra Kumar Pandey
For the Respondent/s : Mr.Ataur Rahmanapp

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

8 15-07-2019 No one appears on repeated calls on behalf of the

petitioner and Opposite Party no.2.

2. This revision application has been filed against
order dated 11.3.2016 passed by the learned Principal Judge,
Family Court, Katihar in Maintenance Case No.126 of 2013, by
which he has allowed maintenance case filed by Opposite Party
no.2 and directed the petitioner to pay Rs.3,000/- per month to
the Opposite Party no.2 and Rs.1,000/- to her two daughters.

3. Factum giving rise to this application in short is
that O.P.no.2 was married with the petitioner in the year, 2009
but after the birth of female child, the petitioner started
assaulting and abusing her and further case is that the petitioner
demanded Rs.50,000/- and for that ousted her from the house
and lastly the father of the Opposite Party no.2 agreed to give



two Kathas of land to the petitioner for construction of house but the petitioner was regularly humiliating and torturing and harassing her.

4. Opposite Party no.2 has stated that the petitioner is earning Rs.20,000/- per month but he is not maintaining her nor her children and even in *panchayati* he agreed to take her but not took her to his house and on 14th of Jan, 2012 Opposite Party no.2 was ousted along with her children, at that time she was conceived and later on she gave birth to her second daughter. On the basis of that she has prayed for Rs.7,000/- as maintenance allowance to her and her two daughters.

5. Opposite Party no.2 and the petitioner appeared in the maintenance case but the process of the reconciliation failed but the petitioner did not file any show cause in the maintenance case, thereafter, he was exempted from filing of the show cause. Later on show cause was filed by the petitioner, in which he has accepted the factum of the marriage and the birth of two daughters but he refuted the other allegations and his case is that the father of the Opposite Party no.2 want to keep him as *Gharjamai*, as such she has lodged this case. He has no source of income and he is working as labourer.

6. It further appears that during the proceeding four witnesses have been examined on behalf of Opposite Party no.2



and three witnesses have been examined on behalf of petitioner in the maintenance case and after conclusion of the trial, the learned court below has come to a conclusion that the Opposite Party no.2 is wife of the petitioner and she is residing in her *maike* along with her two daughters. Whereas the petitioner has admitted that he is working as labourer but it further appears that in spite of that he is not maintaining his wife and his two daughters though they are entitled for maintenance and considering the same, learned Family Court has allowed Rs.3,000/- to O.P.no.2 and Rs.1,000/- to her two daughters, altogether Rs.4,000/- per month.

7. Being aggrieved by the same, the petitioner has preferred this revision application though nobody appears on behalf of the petitioner but from perusal of the revision application, it appears that he has taken plea that he is suffering from eye problem from childhood and he has no agricultural land and he has only a small house and the father of Opposite Party no.2 has given two *kathas* of land for constructing house, on which father of Opposite Party no.2 has made a hut. He has also come with a case that Opposite Party no.2 has got Rs.35,000/- in Indira Awas Yojana and she left his house and he has filed a case for restitution of the conjugal right. Lastly, a *panchayati* was also held and he is still ready to keep her but



Opposite Party no.2 has left her matrimonial house without any rhyme and reason as such she is not entitled for maintenance.

8. From perusal of the case, it appears that evidence adduced on behalf of applicant (wife) discloses that she was subjected to cruelty with respect to demand and she was ousted while she was pregnant and the petitioner is working as a contractor at Himachal Pradesh and in the cross examination she has stated that her husband has married again with one Mona Khatoon daughter of Mansoor. On the other hand she does not do any work. The other witnesses appeared on behalf of the applicant (wife) , have also supported the evidence of the P.W.4 to the extent that the petitioner was working as contractor on payment of Rs.30,000/- per month but his evidence also discloses that the petitioner is working as a labourer. Evidence of O.P.no.3 also discloses that he has accepted the factum of the marriage with another lady and stated that applicant-wife has received Rs.35,000/- in the Indira Awas Yojana but he has admitted that he has not stated so in his show cause. He has also stated in his evidence that his wife is not ready to live with him however, he has admitted that he has married with another lady. As such it appears that the factum of the marriage and two daughters from them is admitted and no any evidence has been brought on the record to show that she has any source of



income. The petitioner has come with a case that she has deserted but he has admitted the marriage with another lady. In such a situation, if she refuses to live with her husband, she can not be refused maintenance.

9. So far income of the petitioner is concerned, Opposite Party No.2 has come with a case that he is working as Contractor at Himachal Pradesh and witnesses of applicant has also stated so but at the same time, the evidence of applicant also discloses that the petitioner is working as labourer and witnesses adduced on behalf of the petitioner have also stated that he is working as labourer. As such he must have earning from that.

10. Considering the discussions made above, learned court below has allowed maintenance application and granted Rs.3,000/- per month as maintenance to applicant- Opposite Party no.2 and Rs.1,000/- for her two daughters. As such I find no illegality or impropriety in the impugned order.

Accordingly, this application is dismissed.

(Vinod Kumar Sinha, J)

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