

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.270 of 2016

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

Subhash Yadav Son of Heera Lal Yadav Resident of Village - Khagani P.S.
Gorea Kothi, District Siwan.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Devanti Devi Daughter of Sangram Yadav Resident of Village Bhopatpur
P.S. Jamo Bazar, District Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ramchandra Sahni, Adv.
For the State	:	Mr.Subash Chandra Mishra APP
For the O.P. No.2	:	Mr. Ajay Kumar Pandey, Adv. Mr. Chandra Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 25-04-2019 This application has been filed against the order dated 05.02.2016 passed in Misc. Case No. 70 of 2016 under Section 125 of the Cr.P.C. passed by the Family Court, Siwan, whereby and whereunder the petitioner was directed to pay an amount of Rs.3000/- per month as maintenance to his wife.

Ground for assailing the impugned order is that the learned Family Court, Siwan, without any materials available on the record has fixed the maintenance amount of Rs.3000/- per month on the basis of the income as skill labour, but there is no materials available on record to show that he is skill labour and further submission is that the case of the petitioner is that he is working as tailor in Gurgaon, but in cross-examination, the



witnesses have stated that they are not knowing as to whether, he is working at Gurgaon as tailor or not. As such, on the limited point of quantum of the maintenance amount, the impugned order has been challenged.

Case of the applicant/O.P. No.2 in short is that she was married with the petitioner in the year 1998 and thereafter she was subjected to cruelty and harassment and ousted from the house, for that a case under Sections 406 and 498 of the I.P.C. has also been lodged against the petitioner, thereafter the present case has been lodged, in which she had prayed for maintenance of Rs.1500/- per month. It further appears from perusal of the record that four witnesses were examined on behalf of the opposite party no.2 and no witness adduced on behalf of the petitioner and considering the evidence of the opposite party no.2, the learned Family Court has allowed the maintenance case finding that the opposite party no.2 is the wife of the petitioner and she has been ousted from the house and she has no source of income and also on the fact that petitioner is a able bodied person and he is a skill labour and after considering the same, the learned Family Court has come to the conclusion that petitioner is getting Rs.10,000/- per month and hence awarded Rs.3000/- per month as maintenance to the opposite party no.2.



Submission of learned counsel for the petitioner is that there is no materials on record to show that petitioner is a skill labour and without any material, the order has been passed assessing his income on the basis of the skill labour. The petitioner has not challenged the other findings regarding factum of marriage as well as she has been deserted and she has no source of income of her own.

On the other hand, learned counsel for the opposite party no.2 has submitted that there is evidence that shows that he is working as a tailor at Gurgaon. No doubt, in cross-examination, the witnesses could not withstood the test of the cross-examination and said that they are not knowing as to whether the petitioner is working at Gurgaon or at any other place, but the fact remains that he is a tailor and no evidence has been adduced on behalf of the opposite party no.2.

Having heard both sides and from perusal of the record, it appears that the witnesses of the opposite party no.2 have stated that the petitioner is working as tailor, no doubt they could not withstood the test of cross-examination regarding work as tailor at Gurgaon, but the fact remains that petitioner is working as tailor that has not been controverted by the petitioner by adducing any evidence and as such it appears that he is a skill



labour. So far assessing the monthly income of the petitioner is concerned, it appears that the learned Family Court has assessed the income on the basis of Rs.285/- per day for the skill labour which will come to Rs.8,550/- per month and in *lump-sum* it has assessed as Rs.10,000/-, however it appears to me that assessment appears to be little higher as the learned Family Court has not considered the monthly income, as petitioner may not be working on all days and as such assessment of *lump-sum* amount of Rs.10,000/- per month does not appear to be proper, rather it appears that as he has calculated the monthly income as Rs.8,550/- *lump-sum* should be assessed as Rs.8,000/- per month and also considering the principle of 1/4 income for which the opposite party no.2 is entitled, maintenance of Rs.2,000/- per month will be proper.

In view of the discussions made above, without interfering with other findings, award quantum of maintenance, is modified to the extent of Rs. 2,000/- per month.

A submission has also been made by learned counsel for the opposite party no.2 that in spite of direction of this court to pay Rs.2,000/- per month to the opposite party no.2, the petitioner has not paid any single penny to her.

In such view of the matter, opposite party no.2 is at



liberty to move before the Family Court for realization of the dues amount as well as maintenance amount per month, which will be considered by the Family Court and pass an appropriate order within a period of three months.

With the aforesaid modification in the impugned order, this revision application is partly allowed.

(Vinod Kumar Sinha, J)

Amjad/-

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