

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.490 of 2016

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

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Vishal Kumar Pandey son of Sri Vishwanath Pandey, resident of Mohalla-
Anaith, P.S.- Ara Nawada, District- Bhojpur Ara.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Mamta Devi wife of Vishal Kumar Pandey, daughter of Sri Santosh Tiwary,
resident of Saurav Printing Press, Khalasi Mohalla, Buxar, P.S.- Buxar
Town, District- Buxar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Gopal Krishna, Adv.
For the Respondent/s	:	Mr. Parmeshwar Mehta, APP
For O.P. No. 2	:	Dr. Chandra Shekhar Azad, Adv. Mr. Sadashiv Tiwari, Adv.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

6 09-07-2019 Heard learned counsel for the petitioner, learned
counsel for opposite party no. 2 as well as learned counsel
appearing on behalf of State.

This application has been filed by the petitioner –
husband against the judgment dated 04.02.2016 passed by
learned Principal Judge, Family Court, Buxar in Maintenance
Case No. 64(M) of 2010 on a petition filed by opposite party
no. 2 -wife under Section 125 Cr.P.C., whereby and where
under, petitioner was directed to pay an amount of Rs. 7,000/-
per month to opposite party no. 2 towards her maintenance as
well as towards the maintenance of her two children.



Facts giving rise to the present revision application is that the opposite party no. 2 is the legally wedded wife of the petitioner and out of the wedlock, she has two minor children. Further case is that opposite party no. 2 and her two sons have been ousted by the petitioner for non fulfillment of demand of dowry and earlier, opposite party no. 2 has filed a Complaint Case No. 524 (C) of 2009 under Section 498A, 406 and 420 of the Indian Penal Code and Section 3 /4 of the Dowry Prohibition Act, which is pending in the court of Sub Divisional Judicial Magistrate, Buxar. Further case is that, thereafter, she filed a maintenance case against the petitioner – husband stating that she has no source of income, whereas, the petitioner has an income of Rs. 20,000/- per month. She has prayed that petitioner may be directed to pay Rs. 12,000/- towards her maintenance as well as towards the maintenance of two children.

In the said maintenance case, a show cause was filed by the petitioner – husband stating that he has no source of income and he is dependent on his parent and in the Matrimonial Case No. 51/2009, which was filed by the petitioner for restitution of conjugal right, opposite party no. 2 refused to reside with the petitioner and admitted that her



husband has got no source of income and as such, it is the applicant – wife, who does not want to live with the petitioner. Hence, she is not entitled for any maintenance. It also been submitted that the applicant – wife is working in Muthoot Finance Company Limited and getting a salary of Rs. 12,000 per month and she has sufficient income to maintain herself and her children.

Learned Family Court after framing the issue, recorded the evidence adduced on behalf of both the parties and after conclusion of the evidence allowed the maintenance case vide his judgment dated 04.02.2016 and directed the petitioner to pay Rs. 7,000/- per month to the wife- opposite party no. 2 towards her maintenance as well as towards the maintenance of her two children.

Being aggrieved by the aforesaid judgment, the petitioner has preferred the present revision application. Contention of learned counsel for the petitioner is that learned Principal Judge, Family Court, Buxar has failed to consider that it is the opposite party no. 2 – wife, who is not ready to live with the petitioner and further she has her own source of income, as such, the maintenance case filed by the opposite party no. 2 – wife is not entitled for maintenance.



On the other hand, learned counsel appearing on behalf of the opposite party no. 2 has submitted that due to torture and cruelty by the petitioner, she was forced to leave her matrimonial house, for which, she has also lodged a Complaint Case bearing Complaint Case No. 524 (C) of 2009 under Section 498A, 406 and 420 of the Indian Penal Code and Section 3 /4 of the Dowry Prohibition Act, which is still pending and as such, it cannot be said that she was not ready to live with the petitioner rather she was forced to live separately. It has further been submitted that materials have come that petitioner is an Advocate and is also working as a property dealer having good monthly income. It has also been submitted that opposite party no. 2 is spending Rs. 4,000/- per month towards the education of two minor children, as such, considering the above, maintenance of Rs. 7,000/- per month does not appear to be excessive rather the same is just and proper.

Having heard the parties and perused the materials available on record, from which, it appears that factum of marriage between the petitioner and opposite party no. 2 is admitted. So far submission of learned counsel for the petitioner that it is the wife – applicant, who does not want to live with the petitioner is concerned, materials show that earlier a complaint



case was lodged by the opposite party no. 2 against the petitioner for subjecting her to torture and cruelty and due to which, she was forced to live separately and thus the same shall be considered to be a just ground for her refusal to live with the petitioner. It further appears from the materials available on record that she is earning Rs. 9,000/- per month from Muthoot Finance Company Limited but at the same time, materials also shows that she has to spent Rs. 4,000/- per month towards the education of two children and apart from that she also has to maintain herself and the two children and it is well settled that where the personal income of the wife is insufficient, she can claim maintenance under Section 125 Cr.P.C, as the test is whether the wife is in a position to maintain herself in the way she was used to in the place of her husband as wife should be in position to maintain a standard of living in consistence with status of family, as held by Hon'ble Apex Court in the case of **Chaturbhuji vs. Sita Bai** reported in **(2008) 2 Supreme Court Cases 316**. In this case from the materials, it is evident that she not only has to maintain herself but also has to look after the needs of two minor school going children. and has to spent Rs. 4,000/- per month towards the education of two children. She has also to provide all other facilities also, therefore, the



submission of learned counsel for the petitioner that she is earning sufficiently for her maintenance, cannot be acceded to.

It further appears that petitioner is an advocate by profession, which has not been denied by him and the materials have also come that he is also engaged in property dealing, however, there is nothing on record to show as to how much, he earns from property dealing. It has also come in the evidence that petitioner has a big house in Ara and also the lands of his share, as such, it can be inferred that he has good source of income.

Considering the above facts, I do not find any infirmity in the impugned judgment dated 04.02.2016 passed by learned Principal Judge, Family Court, Buxar in Maintenance Case No. 64(M) of 2010 directing the petitioner to pay Rs. 7,000/- to opposite party no. 2 towards her maintenance as well as towards the maintenance of two minor children.

A submission has been put forth by learned counsel for the petitioner that in the light of order passed by this High Court in Criminal Miscellaneous application filed by the petitioner for grant of anticipatory bail, the petitioner has been regularly paying Rs. 2,000/- per month to opposite party no. 2 – wife, however, learned counsel for opposite party no. 2 denied



the regular payment of Rs. 2,000 by the petitioner but denied that there is direction as such of this Court.

Whatever may be the facts, as Maintenance Case filed by opposite party no. 2 has already been allowed and the petitioner has been directed to pay Rs. 7,000/- to opposite party no. 2 towards her maintenance as well as towards the maintenance of two minor children. In such, view of the matter, the amount of Rs. 2,000/- as directed by this Court earlier shall be adjusted in the maintenance amount as fixed by the learned Principal Judge, Family Court, Buxar.

With the above observation and direction, this revision application is dismissed.

(Vinod Kumar Sinha, J)

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