

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.531 of 2016

In
Civil Writ Jurisdiction Case No.4002 of 2014

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

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Diwakar Sinha, son of Shyamal Chand Sinha, resident of
Aashirbad Bhawan, Mohalla- Patwatol, Post- Rana, P. S.
Muzaffarpur, District Muzaffarpur.

... .. Petitioner/s

Versus

Anita Kumari, daughter of Amrendra Kishore Narayan, resident of
Mohalla- Shastri Nagar, Siwan, P. S. Siwan, District Siwan.

... .. Opposite party-Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar, Advocate
For the Respondent/s : Mr. Raj Dular Sah, Advocate

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

13 02-09-2019 This revision application has been filed by the

petitioner for setting aside the order dated 13.03.2016 passed in

Misc. Case No. 79 of 1998 whereby and whereunder, he has

awarded Rs.5500/- per month to the opposite party.

The facts in short is that the opposite party has filed a
maintenance case before the Family Court, Siwan that she was
married with the petitioner-husband and there was a demand of
Rs.2,00,000/- and a plot at Patna and on showing inability, she
was subjected to torture and abuse and threatening, so made that
if the demand is not fulfill, he will solemnize the second
marriage. Ultimately, she was ousted from her matrimonial
house, for which, she has also lodged a case under Section 498A



of IPC. Further case of the opposite party is that petitioner has also filed a matrimonial case but the same was dismissed. The opposite party has no means for her maintenance and as such, she is residing with her mother whereas petitioner is a man of means. He is employed and drawing a salary of Rs.10,000/- per month and Rs.10,000/- from the cultivation.

Petitioner-husband has appeared and filed a show cause stating that petitioner being a Lawyer is a skilled and her income is not less than Rs.10,000/- per month. Prior to that she was a Teacher. Further case of the petitioner-husband is that she is lending money in interest and as such, she earns lakhs of rupees, but show cause also shows that he has admitted the marriage between the parties, which was challenged by filing a divorce case. An appeal is pending before the Hon'ble High court. He has denied the allegation of demand of dowry and torture and further allegation is that marriage was not consummated. Further case is that he is not getting salary of Rs.5000/- per month nor has any agricultural land. So, the case of the opposite party is that the case of the opposite party-applicant that he is earning Rs.15000/- per month is without any basis.

Both the parties have also adduced the evidence and



applicant-opposite party has also brought some documents as exhibit.

The learned court below vide impugned order awarding Rs. 5500/- per month to the opposite party as maintenance and allowed Misc. Case No. 79 of 1998.

Being aggrieved by the same, this revision application has been filed by the petitioner on the ground that she is B.Sc., L.L.B and practicing as an Advocate also, from which she is earning sufficient money and the evidence to that effect has also been brought, but the learned court below without considering that she has sufficient income to maintain herself, has allowed the maintenance to the applicant-opposite party granting Rs.5500/- per month as maintenance.

On the other hand, learned counsel for the opposite party has opposed this revision application on the ground that though evidence has been brought to show that she has sufficient income as she is practicing as an advocate but there is no evidence available on the record to show that she is practicing as an advocate and as such, learned court below considering the same has allowed the maintenance case. There is no merit in this revision application.

Having heard both sides, from perusal of the record, it



appears that it is admitted fact that she is wife of the petitioner. It is also admitted that she is now residing at Gopalganj, though, some of the witnesses have stated that she is practicing as an advocate but there is no evidence to show that she is in actual practice, rather some evidence has been brought on record that witnesses saw that some clients sitting on the table of the applicant and witnesses also heard that she has income but all these evidence are hearsay evidence. There is also no evidence available on the record that she is lending money. It has also been brought on the record that she was earlier Assistant Teacher but no document has been produced on behalf of the petitioner to support the aforesaid claim. On the other hand, petitioner has not denied that he is working as Area Manager in Amul Company and drawing a salary of Rs.20,000/- per month and the same has not been denied by the petitioner-husband.

No doubt, she has admitted that she is B.Sc. L.L.B. but as discussed above, no positive evidence is on the record about her income. It is settled principle that merely because the applicant-wife is a qualified, it is not sufficient ground to hold that she is in a position to maintain herself. Nothing has been placed about the income of the applicant-opposite party before the Family Court except some *hearsay* evidence and as such, the



petitioner has failed to prove that she had sufficient income. As such, it would not be a ground to reject her claim for maintenance. [(2008)2 SCC 316 *Chaturbhuj Vs. Sita Bai* and (AIR (2016) SCC 715 *Sunita Kachwaha & Ors. Versus Anil Kachwaha*)].

In view of the facts, discussed above, this Court finds no illegality or impropriety or error apparent on the point of jurisdiction to interfere with the impugned order dated 13.03.2016 passed in Misc. Case No. 79 of 1998, passed by the Principal Judge, Family Court, Siwan.

Accordingly, this revision application stands dismissed.

(Vinod Kumar Sinha, J)

Sunil Shukla/-

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