

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.625 of 2016

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

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Mahanand Thakur Son of Late Jagish Thakur Resident of village - Ghoghaur,
P.S. Baburahi, District Madhubani At Present resident of Gerabari, P.S. Korha,
District - Katihar

... .. Petitioner

Versus

1. The State Of Bihar
2. Paro Devi Wife of Deva Yadav
3. Bhagyashri Kumari daughter of Deva Yadav
4. Brrahmadeo Thakur minor son of Deva Yadav
5. Sanjana Kumari Minor daughter of Deva Yadav
6. Varsha Kumari Minor daughter of Deva Yadav Sl. No. 2 to 5 through their mother and natural guardian Paro Devi as Opposite Party No. 1 At Present of Korha Naya Tola Musapur, P.S. Korha, District - Katihar

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Binod Kumar Sinha, Adv. Ms. Akansha, Adv. Mr. Ashutosh Kumar Singh, Adv.
For the Respondent/s	:	Mr. Ajit Kumar, APP.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

- 13 30-07-2019 1. This revision application is directed against the order dated 28.03.2016 passed by the learned Additional Principal Judge, Family Court, Katihar in Maintenance Case No. 160 of 2009, by which, the learned Additional Principal Judge allowed the petition filed by the opposite party nos. 2 to 6, directing the petitioner to pay to pay maintenance of Rs. 15,000/- per month each to opposite party nos. 2, 4, 5 and 6 and a litigation cost of Rs. 50,000/- and also to deposit Rs. 50,000/- each in the name of



opposite party nos. 4 and 5, who are minor daughters, in the fixed deposit scheme of nationalized bank towards their marriage.

2. It appears that in this case on last two dates i.e. on 19.07.2019 and 29.07.2019, none appeared on behalf of the petitioner and today also, in spite of repeated calls, none has appeared on behalf of the petitioner, however, learned counsel for opposite party nos. 2 to 6 as well as learned APP are present and it further appears that this revision application is of the year 2016, as such, this court proceeds to decide this case on the basis of materials available on record at the stage of admission itself.

3. Facts in short is that opposite party nos. 2 to 6 filed a petitioner under Section 125 Cr.P.C. in the Family Court, Katihar for grant of maintenance from the petitioner stating that opposite party no. 2 was married with the petitioner in the year 1990 and after marriage, she was told that petitioner is already married with one Anju Devi but she is not residing with him and seeing no option, opposite party no. 2 started living with the petitioner and out of her wedlock with the petitioner, she gave birth to three daughters and one son. It is also her case that the petitioner – husband is a class -IV, Government Employee



working in Flood Control Department. Further case of opposite party no. 2 is that after 09.09.2009, the petitioner started torturing her along with his wife Anju Devi and ousted her from the house. Thereafter, she came to her sister's house and was residing there and her husband is not paying any amount towards her maintenance as well as towards the maintenance of her children, causing great hardship as well as her children are deprived of getting education. Further case is that petitioner is earning Rs. 10,000/- per month and he has sufficient income and means to maintain her and children and legal obligation is also on the petitioner to make available the expenses. On the above facts, she has prayed for Rs. 1500 per month each for her maintenance as well as for maintenance of opposite party nos. 3 to 6. Impugned judgment further shows that after appearance of the petitioner -husband, process for reconciliation between the parties initiated, in which, the petitioner admitted opposite party no. 2 to be his wife and opposite party nos. 3 to 6 as their children and taken them to his house but on 18.12.2011, it appears that the compromise between the parties failed.

4. Petitioner has filed his show cause in the maintenance case, stating that he is 4th grade employee in Flood Control Department, Division Kodha and he has falsely been implicated



in this case and all the allegations are false and concocted but in his show cause, he has accepted that opposite party no. 2 was earlier living with him but no marriage was solemnized between them nor opposite party no. 2 is the legally wedded wife of the petitioner rather he is married with one Anju Devi, who is legally wedded wife of the petitioner and she is residing in his house. It is also case of the petitioner is that opposite party no. 2 had knowledge with regard to the marriage of the petitioner with Anju Devi. It has also been stated in show-cause that a complaint case has also been filed by the opposite party no. being Complaint Case No. 3106/2009 under Section 498A of the Indian Penal Code, in which, he has appeared and in that complaint case a report was called for from the Mukhia of Kodha Gram Panchayat and the said Mukhiya filed a certificate that opposite party no. 2 was residing with one Rajesh Choudhary. Petitioner has also denied his income of Rs. 10,000/- per month and also denied that he had not allowed the opposite party no. 2 to enter in his house rather he kept her in his house and provided fooding, clothing etc but she fled away. On the basis of the aforesaid pleading, petitioner has prayed for dismissal of maintenance case filed by opposite party no. 2.

5. It appears that learned Principal Judge, has framed issues



in the maintenance case and one of the issues is that as to whether the opposite party no. 2 is the legally wedded wife of the petitioner and as to whether she and opposite party nos. 3 to 6 are entitled for maintenance from the petitioner.

6. It further appears that six witnesses have been examined on behalf of the opposite party nos. 2 to 6 and they have also brought on record some document to show the relation between the opposite party no. 2 and petitioner and relation between opposite party nos. 3 to 6 with petitioner, which are ext.1 to 6/B. On behalf of the petitioner also, three witnesses were examined. The learned Family Court considering the evidence on the point of above issue and also considering the judgment of Hon'ble Apex Court in the case of **Dwarika Prasad Satpathy v. Bidyut Prava Dixit & Anr.** [(1999) 7 SCC 675], **Chanmuniya vs Virendra Kumar Singh Kushwaha & Ors** [(2011) 1 SCC 1141] as well as the judgment in the case of **Badshah vs Sou. Urmila Badshah Godse & Anr** [(2014) 1 PLJR 149 (SC)], decided the above issue in favour of opposite party nos. 2 to 6 holding that they are entitled for maintenance from the petitioner.

7. The learned Family Court also considered that the opposite party no. 2 has no source of income to maintain herself



and her children opposite party nos. 3 to 6, whereas, petitioner is a Government employee allowed the maintenance case filed by opposite party nos. 2 to 6 directing the petitioner to pay Rs. 1500/- each to opposite party nos. 2, 4, 5 and 6 per month except opposite party no. 3, whose marriage has been solemnized and further directed the petitioner to pay Rs. 50,000/- towards litigation cost and also to deposit Rs. 50,000/- each in the name of opposite party nos. 4 and 5, who are minor daughters, in the fixed deposit scheme of nationalized bank towards their marriage.

8. Aggrieved by the same, the petitioner has preferred the present revision application, however, as I have noticed above none has appeared on behalf of the petitioner in spite of repeated calls and thus the court proposes to decide the case on the basis of materials available on record.

9. From perusal of the petition, it appears that the ground taken by the petitioner for assailing the impugned order is that the learned court below has relied upon on the documents filed on behalf of opposite party nos. 2 to 6 but failed to consider that Mukhia of Kodha Gram Panchayat has submitted a report in complaint case no. 3106/2009, that opposite party no. 2 was married with one Deva Yadav and presently residing with



Rajesh Choudhary and the voter I-card of opposite party no. 2 also disclose the same. Further ground for assailing the impugned order is that opposite party no. 2 could not bring any documentary proof with regard to her marriage with the petitioner nor any she mentioned the name of Pujari, who performed the marriage between the petitioner and opposite party no. 2 and the names of persons, who had participated in the marriage and further she has also not stated the date of marriage but the learned Family Court has not considered all these aspects rather he found that opposite party no. 2 is the wife of petitioner. Further ground taken by the petitioner is that the learned Family Court has committed gross illegality and impropriety in allowing the maintenance application filed by the opposite party nos. 2 to 6, as there are materials available on record to show that petitioner was already married with one Anju Devi before the alleged marriage with the opposite party no. 2 and as such, opposite party no. 2 does not come under the definition of legally wedded wife and thus she is not entitled for any maintenance from the petitioner. The petitioner has also challenged the quantum of maintenance fixed by the learned Family Court.

10. Having considered the averments made in the revision



application as also the submission of learned counsel for opposite party nos. 2 to 6, it appears that opposite party nos. 2 to 6 have come with a case that marriage that opposite party no. 2 married with the petitioner and at the time of marriage, she had no knowledge about the previous marriage of the petitioner with Anju Devi but later on she came to know about the said fact. The petitioner – husband has mentioned in his show-cause that it is falsely claimed by the opposite party no. 2 that she was not allowed to enter into the house rather the petitioner has provided her fooding, clothing etc. but she fled away. He has also admitted that opposite party no. 2 – applicant was residing with the petitioner but the marriage was not solemnized and she is not the legally wedded wife of the petitioner.

11. From perusal of the judgment, it appears that the evidence adduced on behalf of opposite party nos. 2 to 6 have also supported the factum of marriage between the petitioner and opposite party no. 2 and O.P.W. 3 examined on behalf of the petitioner had also stated in his evidence in para -6 that Paro Devi (opposite party no. 2) was living in the house of the petitioner and she resided during 1995-96 for four to five years. Apart from that large number of documents have also been produced by the opposite party no. , which are Ext. 1 LIC policy



issued in the name of opposite party no. 2, in which, petitioner – Mahanand Thakur has been shown to be her husband. Similarly Ext.2 another LIC policy in which, the petitioner is shown to be the proposer and opposite party no. 2 as her nominee. Ext. 3 Voter I –card of opposite party no. 2 issued by the Election Commission of India also shows the name of petitioner as the husband of opposite party no. 2. Ext. 4 to 6/B are the school certificates of opposite party nos. 3 to 6, which shows that petitioner and opposite party no. 2 are their father and mother.

12. Petitioner has assailed the impugned order on the ground that opposite party no. 2 has failed to produce any document to disclose the name of Pujari, who had performed marriage between them in her cross-examination in para -7 and she was knowing the fact that petitioner was married from before, however, learned Family Court has rejected the above objection of the petitioner on the ground that the petitioner is an illiterate lady and it is not possible for her to prove the marriage with reliable evidence. It further appears that according to opposite party no. 2 her marriage with the petitioner was solemnized in the year 1990 as such, it is not possible for opposite party no. 2 to disclose all relevant facts, which happened at the time of her marriage with the petitioner after lapse of more than 19 years.



Apart from that the learned Family Court has also relied upon the admission made by the petitioner during reconciliation proceeding, which, he has mentioned in para – 5 of his judgment, in which, it has been mentioned that during reconciliation, the petitioner has admitted that he is ready to take his wife and children (opposite party nos. 2 to 6) and he will keep them with dignity and care and prayed for disposal of the maintenance case. The aforesaid fact will appear from the order dated 05.08.2011 passed by the learned Principal Judge, Family Court.

13. Learned Principal Judge, Family Court relying upon the judgment of Hon'ble Supreme Court in the case of **Dwarika Prasad Satpathy (supra)**, **Chanmuniya (supra)** as well as the **judgment in the case of Badshah (supra)** as well as considering the materials available on record decided the issue *“as to whether the opposite party no. 2 is the legally wedded wife of the petitioner and as to whether she and opposite party nos. 3 to 6 are entitled for maintenance from the petitioner”* in favour of opposite party no. 2 to 6 and held that opposite party nos. 2 to 6 are entitled for maintenance from the petitioner.

14. From perusal of the above Judgments of Hon'ble Apex Court, in the case of **Badshah (supra)**, it appears that the facts



in short is that a maintenance case was filed by the respondent no. 1- wife under Section 125 Cr.P.C. before the family court on the ground that respondent no. 1 is the wife of the petitioner and respondent no. 2 is her daughter, in which, petitioner – husband had filed his written statement denying his relationship with respondent nos. 1 and 2 as wife and daughter. He alleged that he never entered into any matrimonial alliance with the respondent no. 1 on 10.02.2008 as claimed by her and denied co-habitation with her. He has also claimed that he was married with Sobha on 17.02.1979 and from the said marriage he has one son and one daughter and they are living together, as such, respondent no. 1 was not and could not be his wife denying subsistence of his first marriage. The learned Judicial Magistrate First Class after considering the materials available on record decided the same in favour of respondent nos. 1 and 2 and negated the claim of petitioner. Against which, the petitioner had preferred the Criminal Writ before the Aurangabad Bench of the Bombay High Court and the High Court has affirmed the finding of Judicial Magistrate First Class, against which, the said petitioner has preferred Special Leave Petition before the Hon'ble Supreme Court and the Hon'ble Supreme Court after considering the judgment in the case of [Dwarika Prasad Satpathy](#)



(supra), Chanmuniya (supra) as well as the judgment in the case of Yamunabai Anantrao Adhav vs. Anantrao Shivram Adhay & Anr. (1988) 1 SCC 530, judgment in the case of Savitaben Somabai Bhatiya vs. State of Gujarat & Ors. (2005) 3 SCC 636 and held in para 14, 15, 16 and 17, which read as follows:-

“14. On this basis, it was pleaded before us that this matter be also tagged along with the aforesaid case. However, in the facts of the present case, we do not deem it proper to do so as we find that the view taken by the courts below is perfectly justified. We are dealing with a situation where the marriage between the parties has been proved. However, the petitioner was already married. But he duped the respondent by suppressing the factum of alleged first marriage. On these facts, in our opinion, he cannot be permitted to deny the benefit of maintenance to the respondent, taking advantage of his own wrong. Our reasons for this course of action are stated hereinafter.

15. Firstly, in Chanmuniya case, the parties had been living together for a long time and on that basis question arose as to whether there would be a presumption of marriage between the two because of the said reason, thus, giving rise to claim of maintenance under [Section 125, Cr.P.C.](#) by interpreting the term “wife” widely. The Court has impressed that if man and woman have been living together for a long time even without a valid marriage, as in that case, term of valid marriage entitling such a woman to maintenance should be drawn and a woman in such a case should be entitled to maintain application under [Section 125, Cr.P.C.](#) On the other hand, in the present case, respondent No.1 has been able to prove, by cogent and strong evidence, that the petitioner and respondent No.1 had been married each other.

16. Secondly, as already discussed above, when the marriage between respondent No.1 and petitioner was solemnized, the petitioner had kept the



respondent No.1 in dark about her first marriage. A false representation was given to respondent No.1 that he was single and was competent to enter into marital tie with respondent No.1. In such circumstances, can the petitioner be allowed to take advantage of his own wrong and turn around to say that respondents are not entitled to maintenance by filing the petition under [Section 125, Cr.P.C.](#) as respondent No.1 is not “legally wedded wife” of the petitioner? Our answer is in the negative. We are of the view that at least for the purpose of [Section 125 Cr.P.C.](#), respondent No.1 would be treated as the wife of the petitioner, going by the spirit of the two judgments we have reproduced above. For this reason, we are of the opinion that the judgments of this Court in *Adhav* and *Savitaben* cases would apply only in those circumstances where a woman married a man with full knowledge of the first subsisting marriage. In such cases, she should know that second marriage with such a person is impermissible and there is an embargo under the [Hindu Marriage Act](#) and therefore she has to suffer the consequences thereof. The said judgment would not apply to those cases where a man marries second time by keeping that lady in dark about the first surviving marriage. That is the only way two sets of judgments can be reconciled and harmonized.

17. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of [Section 125, Cr.P.C.](#) While dealing with the application of destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalized sections of the society. The purpose is to achieve “social justice” which is the Constitutional vision, enshrined in the Preamble of the Constitution of India. Preamble to the Constitution of India clearly signals that we have chosen the democratic path under rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the Courts to advance the cause of the social justice. While giving interpretation to a particular provision, the Court is supposed to bridge the gap between the law and society”.



15. The Hon'ble Supreme Court after considering the findings recorded in the cases mentioned above refused to grant leave to the petitioner – Badshah and dismissed the petition filed by the petitioner.

16. In the present case also, as discussed above, there is evidence available on record that she was married with the petitioner and she has specifically stated that after coming to the house of the petitioner, she came to know about the previous marriage of the petitioner with Anju Devi and she has also been cross-examined at length but there is nothing in her cross-examination to doubt her evidence and the same has also been corroborated by the evidence of other witnesses as well as by the documents filed by the opposite party no. 2 in the maintenance case.

17. Petitioner –husband though has come with a case and led evidence that he was married from before and he opposite party no. 2 is not his legally wedded wife but the pleading of petitioner itself shows that opposite party no. 2 was residing in the house of the petitioner and the petitioner has also provided fooding, clothing etc., and the admission made by the petitioner during reconciliation proceeding also supports the said fact. Though petitioner has brought the evidence on record but there



is nothing available on record to show that she was knowing from before about the marriage of the petitioner with Anju Devi rather it is her specific case that after her marriage with the petitioner, she was informed about the said fact only when she came to reside with the petitioner. From perusal of the judgments referred above, it would also appear that the statement of proof of marriage between the petitioner and opposite party no. 2 is a proceeding under Section 125 Cr.P.C. is not as strict as under Section 494 of the Indian Penal Code. A claimant under Section 125 Cr.P.C. is able to prove that she and her husband residing together for considerable period that would raise a presumption of valid marriage between them. In this case, she has also come with evidence that she was married with the petitioner and only because, the petitioner has wife from before will not make the marriage of opposite party no. 2 illegal and invalid as far as proceeding under Section 125 Cr.P.C. is concerned specially when there is nothing available on record that she was known about the previous marriage of the petitioner from before.

18. In view of the above, the finding recorded by the learned Family Court with regard to issue no. 1 as to whether the opposite party no. 2 is the legally wedded wife of the petitioner



and as to whether she and opposite party nos. 3 to 6 are entitled for maintenance from the petitioner, appears to be just and proper does not require any interference by this Court.

19. So far other points are concerned, the evidence available on record clearly disclosed that she was residing separately and maintaining herself and her children by working as maid servant. Petitioner has not brought any evidence on record to show that she has sufficient source of income to maintain herself as well as the children rather opposite party no. 2 has come with a case that petitioner is a Government Servant and earning Rs. 10,000/- as he is working in flood control division. No doubt the income of the petitioner may be more than Rs. 10,000/- at present considering the fact that petitioner is a Government Servant but in absence of any other proof either filed by the petitioner or the opposite party nos. 2 to 6, the monthly income of the petitioner can be assessed only around Rs. 10,000/- per month. Considering the same, grant of Rs. 15,00/- per month each to opposite party nos. 2, 4, 5 and 6 appears to be little excessive and further direction to pay Rs. 50,000 as well as the direction to deposit Rs. 50,000/- each in the name of opposite party nos. 5 and 6 also appears to be excessive. As such, while upholding the other findings of the



learned Family Court, it will be appropriate to reduce the amount of maintenance from Rs. 1,500/- to Rs. 1,000/- to be paid by the petitioner to each of the opposite party nos. 2, 4, 5 and 6 per month. Further direction to pay the litigation cost as well as the direction to deposit Rs. 50,000/- each in the name of opposite party nos. 5 and 6 are also appears to be without any material available on the record and there is also no such prayer in the maintenance case filed by opposite party nos. 2 to 6.

20. With the above modification, this revision application is dismissed.

21. It is made clear that it is open to the either parties to approach the family court if there is any change in circumstance during pendency of this revision application to the get the order revised under Section 127 of the Cr.P.C., which will be considered by the Family Court and will be disposed of by an appropriate order.

(Vinod Kumar Sinha, J)

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