

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.95 of 2016

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

Pradeep Sah, S/o Late Bahadur Sah, resident of Village- Gamharia, P.S. Bhargama, District- Araria.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Punam Devi, W/o Pradeep Sah, D/o Ganga Prasad Sah, resident of Village- Sohta, P.S. Chhatapur, District- Supaul.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Gopal Kumar Jha
For the Respondent/s : Mr. Umesha Nand Pandit App

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date : 09-04-2019

This application has been filed against order dated 15.09.2015 passed by the Principal Judge, Family Court, Araria in Maintenance Case No. 70 of 2004 whereby petitioner has been directed to pay Rs. 5000/- per month to O.P.No. 2.

2. The case of the O.P. No. 2, in short, is that O.P.No. 2 claimed herself to be the legally wedded wife of the petitioner and from his wedlock, she had sons and daughter. It is also her case is that in the year 1991, petitioner has performed second marriage, which was protested by O.P.No. 2, but anyhow she accepted the marriage and she gave birth to two sons and a daughter also. Thereafter petitioner has made registry of two Bigha land in favour of second wife and started torturing



O.P.No. 2 and lastly, he ousted her from matrimonial house on 08.06.2004.

3. The case of O.P.No. 2 is that petitioner has 15 acres of land and earns Rs. 10,000/- per month and she is unable to maintain herself as such she claimed Rs. 4000/- per month as maintenance. During pendency of the maintenance case, O.P. No. 2 has appeared in the court below and thereafter evidence was adduced on behalf of both parties.

4. From the impugned order, it appears that three witnesses have been examined on behalf of the O.P. No. 2 (petitioner in Family Court) and they have supported the case of the O.P.No. 2 stating that she is surviving on the income of her parents and earns nothing from nursing and delivery work. Whereas on behalf of petitioner (O.P. in family court), three witnesses have been examined. They disclosed that O.P. No. 2 (petitioner in Family Court) is working as Asha Nurse and earns own income, whereas petitioner (O.P. in family court) has no source of income and is depending on the parents. As per evidence, petitioner (O.P. in family court) has no landed property on his name. It further appears that the Principal Judge, while considering the evidence, has come to the conclusion that O.P. No. 2 (petitioner in Family Court) is the wife of petitioner



(O.P. in family court) and she has been deserted by the petitioner (O.P. in family court) as he had married second marriage with another lady and considering the same the impugned order granting maintenance of Rs 5,000/- has been passed.

5. However, from perusal of entire order sheet, I find that though there are finding of learned Family Court that O.P. No. 2 (petitioner in Family Court) is wife of petitioner (O.P. in Family Court) and she has been deserted.

6. Petitioner-husband tried to show that applicant-wife is working as Asha Nurse but there is no evidence on the point of income of applicant-wife. So far annual income of husband-petitioner, it has only come in the evidence that he has land, which has even been denied by the O.P.No. 2.

7. To my opinion for grant of maintenance, apart from other findings, the court had to consider the income of the petitioner-husband in order to assess quantum of maintenance to be allowed to the applicant- wife but what appears from perusal of impugned order that there is no finding to annual income of the petitioner-husband and without assessing the annual income, quantum of maintenance has been fixed.

8. In such view of the matter, the impugned order does



not sustain as such this revision application is allowed.

9. Accordingly, impugned order dated 15.09.2015 passed in Maintenance Case No. 70 of 2004 is set aside and the matter is remanded back to the Family Court, Araria for assessing the annual income of the petitioner in order to fix maintenance amount to be payable to the applicant-wife.

10. Both parties are directed to co-operate in disposal of same and the Family Court is directed to dispose of the same after hearing both parties and allowing them to adduce evidence on the point of income as well as on other points, if required, within a period of nine months.

11. In the meantime, petitioner shall continue to pay 50% of the maintenance amount to the O.P.No. 2 as directed in maintenance case i.e., Rs 2500/- per month payable in the first week of every month, otherwise, O.P.No. 2 is at liberty to move for realisation of the same through the process of the court.

(Vinod Kumar Sinha, J)

sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

