

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.489 of 2016

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

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SMT. RITA DEVI @ RITA DEVI W/o Shyam Lal Das, R/o village Tulsipur,
P.S. Kharik, Sub Division Naugachia, District Bhagalpur.

... .. Petitioner

Versus

1. State of Bihar
2. Shyam Lal Das, S/o Late Bhagwat Das, R/o village and PO- Tulsipur, P.S. Kharik, Sub Division, Naugachia, District Bhagalpur.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Dhananjay Kumar Gupta
For the State	:	Mr. Parmeshwar Mehta,APP
For the O.P.No.2	:	Mr. Diwakar Upadhyaya

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

10 15-07-2019 This revision application has been filed against order dated 13.1.2016 passed by the learned Principal Judge, Family court, Bhagalpur in Misc. (Maintenance) Case No.19 of 2002 whereby and whereunder the maintenance application filed by the petitioner was rejected by the learned Principal Judge, Family Court, Bhagalpur.

2. Facts giving rise to this application in short is that the petitioner, Rita Devi claims herself to be legally wedded wife of Opposite Party No.2 Shyam Lal Das and also claims that in the marriage maternal uncle of Opposite Party no.2 namely Suresh Das participated and joint photograph was taken. In the marriage Pandit was Late Lal Jha and the Barber was Pramod



Thakur. It is also her case that the petitioner was working in the Telephone Exchange of Katihar and thereafter she started living with him as husband and wife and thereafter a baby child was born namely Sabri Kumari, who was aged about five years at the time of filing of application. Further case is that later on she came to know that Opposite Party no.2 has performed another marriage with Gulabi Devi, after his marriage with the petitioner, which was objected by her. It is also stated that she objected the second marriage and thereafter she was misbehaved by the family members of Opposite Party no.2, as such she filed a case under Section 498(A) of the Indian Penal Code, which is numbered as Complaint Case No.269 of 2002 and thereafter she also filed Maintenance Case stating that she has no other source of income for herself and her daughter and she was forced to live at her *Maike*.

3. Opposite Party no.2 has appeared in the case and challenged the validity of the marriage of petitioner with Opposite Party no.2 on the ground that he was married one Gulabi Devi on 17.5.1995. However, *Bahnoi* (brother-in-law) of the petitioner took him to Khagaria (Maheshpur) and on the point of pistol and got him married with the petitioner and he was confined there. It is also his case that as soon as he was



released from confinement, he went to Kharagia, lodged a complaint case before the CJM and also informed at his office. It is also his case that due to threatening he could not pursue the complaint case and that case later on dropped. Further case is that the marriage of the petitioner with Opposite Party no.2 is not valid marriage as at that time his married wife Gulabi Devi was substing and as such the same is not valid marriage under Section 5(1) of the Hindu Marriage Act, hence the petitioner is not entitled for maintenance. Opposite Party No.2 has also challenged the contention of the petitioner that the girl is born out of the marriage between the petitioner and Opposite Party no.2.

4. Learned Principal Judge, Family Court, Bhagalpur after adducing the evidence, has dismissed the maintenance case filed by the petitioner, vide order dated 8.3.2007.

5. Against the above order passed by the learned Family Court, the petitioner has preferred Criminal Revision no.774 of 2007 before this Court and this Court after hearing both the parties allowed the revision application, set aside the order and remanded the case back to the learned court below to consider it afresh after giving an opportunity to both the parties to adduce evidence.



6. It further appears that thereafter two witnesses have been examined on behalf of the petitioner, however, the petitioner has herself has not appeared in the dock to lead evidence in support of her contention and on behalf of Opposite Party no.2 also four witnesses were examined, apart from that several documents have been produced including the judgment dated 26.10.2010 passed by the SDJM, Naugachia in complaint Case No.269 of 2002 by which the complaint filed by the petitioner was dismissed , which is Exhibit 'D'.

7. Learned Family Court on perusal of the entire materials available on the record has dismissed the maintenance application filed by the petitioner holding that the petitioner is not legally wedded wife of Opposite Party no.2 Shyam Lal Das, which is order under challenge in this application.

8. Being aggrieved by the above order, the petitioner preferred present revision application on the ground that the learned court below has not considered that the daughter of the petitioner has born during the subsistence of the marriage of the petitioner with Opposite Party no.2 and considering the other materials, Family court has come on a finding that she is not legally married wife of Opposite Party no.2. However, during argument, the learned counsel for the petitioner has admitted



that after the remand of this case the petitioner has not appeared before the court for her examination and the petitioner has also not made any prayer for D.N.A. test of her daughter but submitted that she has a child from her marriage with the Opposite Party No.2.

9. On the other hand, Opposite Party no.2 has countered the submission of the learned counsel for the petitioner on the submission that there is nothing available on the record to show that the daughter of the petitioner was born during the subsistence of the marriage between petitioner and Opposite Party no.2 as there is no cogent and reliable evidence available on the record to show that after marriage they reside together. Further submission is that the learned court below considering the fact that the petitioner was married with one Gulabi Devi earlier to the marriage with this petitioner, has come to a finding that marriage of the petitioner with Opposite Party No.2 is not a valid marriage and as such she can not claim maintenance and the learned court below has also considered several documents and the evidence adduced on behalf of parties for arriving to such a conclusion. Learned counsel for Opposite party No.2 has submitted that this revision application is devoid of any merit and does not deserve any interference of



this Court.

10. Having heard both sides and perused the record and the materials available on the record, it appears that the petitioner claims herself to be married wife of Opposite Party no.2 on the basis of marriage performed by *pandit* and barber in presence of maternal uncle of Opposite Party no.2 on 17.5.1996 and she also claims that after marriage, the daughter was born. Further case is that later on she came to know that he has married with Gulabi Devi, which was protested by her. However, from perusal of the evidence and the materials available on the record it appears that prior to her marriage with Opposite Party No.2, he was married with Gulabi Devi on 1.1.1995. Materials have also been brought on record to show that maternal uncle of petitioner has taken Opposite Party No.2 on false plea to her house and forcibly married with the petitioner for which he has lodged a complaint case but due to threatening , he could not pursue the case and the case was dropped. Opposite Party No.2 has also brought judgment (Ext. 'D') in a case under Section 498(A) of the IPC filed by the petitioner to show that in that case she was not considered to be valid wife of Opposite Party no.2 and the above case filed by the petitioner was dismissed and no appeal was preferred by the



petitioner. It further appears that earlier the Maintenance Case filed by the petitioner under Section 125 of the Cr.P.C. being case no.1 of 1999 was also dismissed vide order dated 1.11.2000 (Ext. 'E' & 'F'). It further appears that in spite of this case being remanded back with an opportunity to both the parties to lead evidence in order to prove the factum of the marriage but the petitioner did not choose to appear in dash to show that she was married with Opposite Party no.2 and except her mother (P.W.1) and one Kaushaliya Devi (P.W.2) whose identity was challenged by Opposite Party No.2, there is also no reliable evidence available on record to show that the daughter is born during the subsistence of the marriage with the Opposite Party No.2.

11. So far factum of marriage of the petitioner with Opposite Party No.2 as his first wife, Opposite Party No.2 and birth of a daughter during her marriage with the opposite party no.2 would have been best witness but she did not choose to appear before the Court to support her case and allow the Opposite Party No.2 to cross examine him. Order of learned Family court also disclosed that petitioner never come with a prayer for holding D.N.A. test of her daughter.

12. Considering the above fact, the Family Court has



come to a finding that she is not valid wife of Opposite Party no.2 and disallowed the prayer for maintenance . As such I find no illegality in the impugned order.

13. Accordingly, this revision application is dismissed.

(Vinod Kumar Sinha, J)

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