

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.669 of 2016

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

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Akhilesh Pandey @ Akhilesh Kumar Pandey @ Mantu Pandey S/o Devendra Nath Pandey, resident of Village- Bardiha, P.S. Natmar, District- Rohtas.
... .. Petitioner

Versus

Babi Kumari Devi D/o Inshwar Chandra Misra, Resident of Village- Pathar, P.S. Charpokhari, District- Bhojpur, at present House at Satyendra Choudhary, Jamuan, New Karman Tola, P.S.- Arrah Nawadah, District- Bhojpur.
... .. Respondent

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Appearance :

For the Petitioner/s : None
For the Respondent/s : Mr. Uday Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

6 22-07-2019 Nobody appears on behalf of the petitioner. It appears that on last date also nobody had appeared on behalf of the petitioner. Learned counsel for opposite party No.2 is present. Considering this revision application is of the year 2016, on perusal of the record, this is being disposed of.

This application has been filed against the order dated 1.6.2016 passed by learned Principal Judge, Family Court, Bhojpur, Ara in Miscellaneous (Maintenance) Case No. 120 of 2009 by the opposite party-wife whereby and whereunder petitioner was directed to pay a sum of Rs.6000/- per month and a lump sum amount of Rs.10,000/- towards litigation cost to the opposite party from the date of filing of the case.

The fact giving rise to this revision application is that opposite party has filed an application for maintenance on the ground that she was married with the petitioner in the year 2003 and



thereafter she was subjected to torture and harassment with respect to demand of dowry and ultimately she was driven out from her matrimonial house and she is unable to maintain herself. On the other hand, petitioner has landed property and also other source of income and as such she is entitled to maintenance of Rs.3000/-.

In this case petitioner has appeared and filed his show cause admitting the factum of marriage but denying the fact that there was any relationship of husband and wife and petitioner was in possession of decree of divorce and as such opposite party is not entitled to any maintenance.

On completion of pleadings witnesses have been examined on behalf of both the parties. On behalf of opposite party altogether three witnesses have been examined apart from the documents produced on her behalf and on behalf of petitioner also three witnesses have been examined. Learned Principal Judge, Family Court has allowed the maintenance case and directed the petitioner to pay Rs.6000/- per month to opposite party.

Being aggrieved by the same, the present revision application has been filed on the ground that already there is decree of divorce against the opposite party and as such she is not entitled to the maintenance and the order under challenge is in violation of Section 125(4) of the Code of Criminal Procedure. Further ground is that petitioner is an unemployed youth and he is not in a position to pay the amount as granted by the impugned order.



From perusal of the impugned order it appears that petitioner has admitted the factum of marriage with opposite party and though he has come with a case that he has already divorced her by decree of divorce. However, from the materials available on the record it appears that there was ex parte decree of divorce passed by the Family Court, which has been set aside by learned Principal Judge, Family Court, Rohtas at Sasaram in Misc. Case No. 47 of 2009. It further appears from perusal of the impugned order that even during pendency of the case also, opposite party was ready to live with the petitioner but petitioner refused to keep her. As such opposite party has valid reason for living separately.

So far income of opposite party is concerned, petitioner has come with evidence that she was doing sewing and embroidery and her income was Rs.9000-10000/- per month but no evidence was brought on the record by the petitioner in support of his case. It further appears that opposite party has prayed for maintenance of Rs.3000/- per month with a plea that petitioner has his house at Buxar and he has income of Rs.10,000/- from that by way of rent and he was working at Diamond factory, whereas petitioner has come with a case that he was working in a plastic factory at Gujarat earning Rs.1800/- per month and he has 3-4 kathas of land in his share but PW 1, father of petitioner in his evidence has admitted that petitioner has at least 10 kathas of land. Apart from that, petitioner is able bodied person and can earn himself.



Petitioner assailed the impugned order on the ground that learned Family Court has granted maintenance of Rs.6000/- per month which is not only beyond the claim of opposite party but also appears to be excessive in view of the evidence available on the record.

From the evidence discussed above, it appears that evidence of petitioner (husband) disclosed that he has 10 kathas of land and earlier he was working at Gujarat and earning Rs.1400/- per month. Apart from that, he is able bodied person. However, it appears that grant of maintenance of Rs.6000/- per month appears to be little excessive. As such, the same is modified to Rs.3000/- per month.

Accordingly, this application is disposed of with the above modification in the award of maintenance.

(Vinod Kumar Sinha, J)

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