

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.828 of 2016

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

HIRALAL CHAUDHARY @ HEERALAL YADAV, son of Late Saral Chaudhary, resident of village Chhitauna, P.S. Kateya, District Gopalganj
... .. Petitioner

Versus

1. The State of Bihar
2. Jaimati Devi, wife of Hiralal Chaudhary, resident of village Chhitauna, P.S. Kateya, District Gopalganj, presently residing at village Kalyanpur, P.S. Bhorey, District Gopalganj
... .. Respondents

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Pandey No-5
For the Respondent/s : Mr.Ram Sevak Choudhary

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

5 02-09-2019 I.A. No. 1654 of 2016 has been filed for
condoning the delay in filing this revision application.

Having heard both sides and considering the averments made in the petition, the I.A. is allowed and the delay in filing this revision application is condoned.

This application has been filed by the petitioner-husband against the order dated 11.4.2016 passed by learned Principal Judge, Family Court, Gopalganj in Misc. Case No. 248 of 2010 whereby and whereunder Rs.3000/- was allowed to opposite party No.2-wife for her maintenance.

The case, in short, is that opposite party No.2 was



married to the petitioner in the year 1988 and after some time the petitioner performed second marriage with sister of opposite party No.2 and ousted opposite party No.2 from the house, for that she has lodged a maintenance case stating that she has no source of income and she is working as maidservant in residence of one Doctor and one another person, whereas petitioner has income of Rs.8000/- per month as he is a driver and apart from that he has 7 bighas of land, as such she is claiming maintenance of Rs.3000/- per month.

Petitioner has appeared in maintenance case and he did not choose to file written statement, as such he has been debarred from adducing evidence on his behalf and cross-examining the evidence adduced on behalf of opposite party No.2.

It further appears that four witnesses have been examined on behalf of opposite party No.2-applicant and from their evidence it appears that they have supported the factum of marriage between opposite party No.2 and petitioner and evidence further disclosed that petitioner has remarried with sister of opposite party No.2. Evidence



further disclosed that petitioner has 8 bighas of land and a tractor. It further appears from the evidence she is working as maidservant in the houses of one Doctor and another person.

Record further disclosed that petitioner has been given chance to adduce evidence in support of his case but in spite of that he did not choose to produce witnesses in the court, including himself and as such the evidence was closed and the impugned order has been passed.

It further appears that learned Family Court has come to the conclusion that applicant is legally wedded wife of the petitioner and she has been neglected by the petitioner and learned Family Court has also come to a finding that opposite party-applicant has no sufficient income to maintain herself and petitioner is able bodied person and as such allowed the amount of maintenance of Rs.3000/- per month to opposite party No.2.

Learned counsel for the petitioner has assailed the impugned order on the ground that there is no finding with respect to the assessment of annual or monthly income of the petitioner and without assessment Rs.3000/- has been



allowed towards maintenance of opposite party No.2 and as such the order allowing maintenance is fit to be set aside.

On the other hand, learned counsel for opposite party No.2 has defended the impugned order.

Having heard both sides and from perusal of the record it appears that the fact that opposite party No.2 is wife of petitioner is admitted, petitioner has remarried with sister of opposite party No.2 is admitted and that is sufficient ground for opposite party No.2 for not residing with the petitioner. The fact that opposite party No.2 is working as maidservant has not been controverted even no evidence has been brought on the record by petitioner to show that she has sufficient income to maintain herself and further appears that petitioner has monthly income of Rs.8000/- apart from 8 bighas of land and the aforesaid assertion has not been controverted by filing any show cause and even no witness has been examined to controvert the above, rather evidence was brought that petitioner has to maintain his father-in-law and mother-in-law but that is not sufficient to debar opposite party No.2 from her maintenance.



It is admitted that opposite party No.2 is wife of the petitioner having no sufficient income to maintain herself, as such she is entitled to maintenance from the petitioner and even if it is assumed that petitioner is an able bodied person and he is earning by doing labour job, still he has income of Rs.9000/- per month, i.e., (Rs.300 x 30) as such the maintenance amount of Rs.3000/- does not appear to be excessive.

In view of above discussion, I find no merit in this application. It is, accordingly, dismissed.

(Vinod Kumar Sinha, J)

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