

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.607 of 2016

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

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Md. Ekramul Haque Son of late Md. Shamim
Resident of Station- Jagdishpur, District Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Bibi Ruhamja Wife of Md. Ekramul Haque
3. Bibi Gulshan (Minor Daughter of Md. Ekramul Haque)
Both Resident of Village- Kharyara, Police Station - Barahat, District Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Binay Kumar
For the Respondent/s : Mr.Smt. Anita Kumari Singh

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 19-07-2019 This application has been filed against order dated 29.4.2016 passed in Misc. Case No.148 of 2011/Trial No.10 of 2016 by the learned Principal Judge, Family Court, Banka, by which he has directed the petitioner–husband to pay altogether Rs.5,000/- per month to O.P.no.2 (wife) and O.P.no.3 (her daughter).

2. Facts giving rise to this application in short is that an application has been filed on behalf of the O.P.no2 applicant under Section 125 of the Code of Criminal Procedure stating *inter alia* that she was married with the petitioner and a female child was born, thereafter she was subjected to cruelty. It is also her case that the petitioner is a Government servant earning



Rs.35,000/- per month, as such she has prayed for Rs.10,000/- as maintenance to her and her daughter.

3. Petitioner has appeared and filed show cause, admitting the factum of marriage with applicant-Opposite Party No.2 but denied the allegation of torture rather he has come with a case that O.P.no.2 does not want to live with the petitioner as having friendship with other boys and as such in *panchayati* in presence of the family members and *Panch*, he divorced her in presence of *Panches* and paid total amount of Rs.1,21,000/- by way of 'Den Mehar' including maintenance for 'Iddat' period for herself and her daughter. He has also come with a case that he has an earning of Rs.6,000/- per month only as he is a contract teacher in the government.

4. On completion of the pleading, witnesses have been examined on behalf of both the parties.

5. It appears that the learned Family Court after conclusion of the trial has come to the conclusion that it is the admitted case that applicant-Opposite Party no.2 is the married wife of the petitioner and she has a daughter also from the marriage with the petitioner and come to the conclusion that she is entitled for maintenance. The learned court has assessed the monthly income of the petitioner as Rs.20,000/- per month, accordingly awarded maintenance of Rs.5,000/- altogether in



favour of O.P.no.2 and her daughter by the impugned order.

6. Being aggrieved by the impugned order, the present revision application has been filed on the grounds that the learned Family Court has failed to consider that O.P.no.2 is a divorced wife as such she is not entitled for maintenance and at best she is entitled for maintenance during 'Iddat' period and as per Muslim Women (Protection of Rights on Divorce) Act, 1986 and has already been paid for her maintenance and for maintenance of the daughter but in spite of that the learned Family Court without considering the same has passed the impugned order allowing maintenance to O.P.no.2 and her daughter. Further submission is that the petitioner is getting only Rs.6,000/- per month as he is a contract teacher and Rs.5,000/- has been awarded as maintenance to the O.P.no2 and her daughter, which is excessive.

7. In this case notices were issued to O.P.no.2 and it appears that O.P.no.2 has received the registered cover notice, as appears from the acknowledgement and also filed Vakalatnama but no body appears on behalf of O.P.no.2.

8. Heard the learned counsel for the petitioner and the learned A.P.P. and perused the record, from which it appears that the petitioner has taken a plea that he has divorced the O.P.no2 and paid total amount of '*Den Mehar*' and also amount for



maintenance during '*Iddat*' period. However, on perusal of the record, except coming with such a pleading, there is nothing available on the record to show as to when he has divorced the O.P.no.2 and when the total amount '*Den Mehar*' and amount of maintenance was paid and before whom he has divorced his wife.

9. Even the petitioner has not brought any such evidence to my notice or mentioned in revision application. Mere plea taken in the written statement of a divorce having been pronounced sometimes in the past can not be itself treated as '*Talaq*'. Petitioner ought to have adduced evidence and proved the pronouncement '*Talaq*' and if he failed in proving the plea raised in the written statement, same shall be considered as not proved (*per (2002) of SCC 518* reported in the case of *Shemim Ara Vrs. State of U.P.*) As such claim of the petitioner of having divorced the O.P.no.2 has rightly not been considered by the learned family court.

10. Second submission of the learned counsel for the petitioner is that maintenance amount is excessive and in this concerned, the case of the petitioner as per his show cause is that he is getting only Rs.6,000/- per month as salary, as he is a contract teacher, however, the learned Family Court has not considered the same on the ground now a days even contract



teacher is getting Rs.20,000/- per month. No any document has been produced by the petitioner in support of his above contention of income of Rs.6,000/- per month. Even no salary certificate has been annexed with this application. As such finding of the Learned Family Court that he is getting Rs.20,000/- per month and on that basis allowing Rs.5,000/- to O.P.no.2 and her daughter appears to be just and proper.

11. In view of the discussions made above, I find no illegality or error apparent on record in the impugned order, hence, it does not require any interference.

12. Accordingly, this revision application is dismissed.

(Vinod Kumar Sinha, J)

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