

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.838 of 2016

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

Md. Monajeer Son of Abdul Sattar resident of Village-Rakshi, P.S. korha,
District Katihar

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. Bibi Aliyara Khatoon daughter of Saidur Rahman resident of Village-Rakshi, P.S. Koroha, District Katihar Presently residing at village Thuthibag Nimtalla, Sukhasa, P.S. Barari, District Katihar
3. Md. Asif Ali Son of Md. Monajeer
4. Shyama Khatoon Daughter of Md. Manajeer Both Opposite Party no. 2 and 3 are minor and they are Under the guardianship of Mother Bibi Aliyara Khatoon and residing at village Thuthibag Nimtalla, Sukhasan, P.S. Barari District Katihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ajit Kumar Singh
For the Respondent/s : Mr.Mithilesh Kumar Khare

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 04-09-2019 This revision application is directed against the order dated 26.5.2016 passed by learned Principal Judge, Family Court, Katihar in Maintenance Case No. 920 of 2014 whereby and whereunder the opposite party No.2-applicant and her two children, i.e., opposite party Nos. 3 and 4 were allowed total Rs.5000/- per month as maintenance amount.

The case, in short, is that opposite party No.2-applicant was married with the petitioner as per Muslim Rites and Customs and after marriage the petitioner-husband started demanding one motorcycle and for non-fulfilment of the same she was subjected to cruelty and even after Panchayati the matter could not be pacified



and in the meantime she gave birth to two children from the wedlock and she is spending her life miserably and as such she claimed Rs.6,000/- for herself and Rs.3,000/- for her two minor children for maintenance before the Family Court, Katihar.

It appears that opposite party-petitioner has appeared in the maintenance case but he has not filed show cause and reconciliation proceeding also failed.

It further appears that applicant-opposite party No.2 got examined four witnesses on her behalf but petitioner has not adduced any evidence and also not cross-examined the witnesses of applicant-opposite party No.2. It further appears that learned Family Court after considering the income of the petitioner on the basis of evidence brought on the record, which remained uncontroverted and also considering the fact that petitioner remarried with another lady and there was nothing on the record to show that applicant-opposite party No.2 has any income for her maintenance as well as her two children, has allowed the maintenance case and directed the petitioner to pay Rs.4,000/- per month to opposite party No.2-applicant and Rs.1,000/- to her children for their maintenance.

Learned counsel for the petitioner has assailed the impugned order passed by learned Family Court on the ground that petitioner has already divorced opposite party No.2, as such she is not entitled to any maintenance under the provisions of Section 125 Cr.P.C. and at best she can only be allowed maintenance during Iddat



period under the Muslim Women (Protection of Rights of Divorce) Act, 1986. Further submission is that learned Family Court has failed to consider that opposite party No.2 is an educated lady and she is able to maintain herself but in spite of that she was allowed maintenance without any finding on that and the maintenance amount is excessive.

On the other hand, learned counsel for opposite party Nos. 2 to 4 has defended the impugned order on the ground that in this case petitioner-husband has not filed any show cause and for the first time he has come with a case that he already divorced opposite party No.2-applicant and she is an educated lady as such she is able to maintain herself and even he has not brought any evidence on the record in support of his contention and now the plea is being raised that is without any substance, as such he cannot be allowed to take such plea before this Court in its revisional jurisdiction.

It is well settled that merely a plea that wife-applicant is an educated lady and is able to maintain herself cannot be sustained unless evidence is brought on the record that she is earning sufficient amount in order to maintain herself, otherwise it is well settled principle of law that even the educated wife having no sufficient income to maintain herself is entitled to maintenance by the Family Court in view of the decision of the Hon'ble Apex Court in the case of **Sunita Kachwaha & Ors. vs. Anil Kachwaha : (2014) 16 SCC 715.**



Having heard both sides and on perusal of the record it appears that since petitioner-husband has not appeared and filed any show cause in this case and there is nothing available on the record in support of his case that he has already divorced opposite party No.2 and she is an educated lady and able to maintain herself. Even petitioner has not brought any evidence on the record nor he got himself examined in this case as a witness, as such, the above plea of the petitioner has no substance. On the other hand, learned Family Court considering the case of the applicant-opposite party No.2, assessed income of petitioner as Rs.20,000/- per month and on the other hand petitioner has not filed his show cause controverting the case of opposite party No.2 nor any evidence has been brought on the record to doubt the case of opposite party No.2, as such the order of learned Principal Judge, Family Court allowing Rs.4000/- and Rs.1000/- respectively for maintenance of opposite party Nos. 2 and opposite party Nos. 3 to 4 per month does not suffer from any illegality and the maintenance amount is also not excessive.

In view of the discussions made above, I find no merit in this application, accordingly this application is dismissed.

(Vinod Kumar Sinha, J)

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