

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.749 of 2016

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

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Ajay Yadav Son of Late Chhedi Yadav, Resident of Village- Chhoti Bishhar,
P.S. Barahat, District- Banka.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Gunjan Devi W/O Ajay Yadav, D/O- Kishan Yadav, Resident of Village-
Deghara, P.S. Barahat, District- Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s :

For the Respondent/s : Mr.Sri Ahmad Ali

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

6 29-07-2019 Nobody appears on behalf of the petitioner in spite of repeated calls and from perusal of the record, it appears that on 11.05.2018, 23.08.2018 and on 23.07.2019, nobody had appeared on behalf of the petitioner, when the case was called out.

It further appears that this case has been filed for setting aside the order dated 06.04.2016 passed by learned Principal Judge, Family Court, Banka in Misc. Case No. 13/2011 Tr. No. 56/16, by which, he has allowed the petition filed by opposite party no. 2 under Section 125 of the Cr.P.C. directing the petitioner to pay Rs. 2,000/- to opposite party no. 2 and Rs. 2,000/- to her son total Rs. 4,000/- towards their



maintenance.

Since nobody has appeared on behalf of the petitioner, this case is being disposed of on the basis of materials available on record.

It appears that a maintenance case has been filed by opposite party no. 2 under Section 125 of the Cr.P.C. stating that her marriage was solemnized with the petitioner in the year 2002 according to Hindu rights and customs and out of wedlock, she gave birth to a male child. Thereafter, the petitioner started demanding Rs.40,000/- and one Hero Honda Motorcycle from her father and due to non -fulfillment of the said demand, opposite party no. 2 was subjected to torture at the hands of the petitioner, for which, her father has got the Panchayati conducted on several occasion and ultimately, she was ousted from the house keeping her all belongings, for which, opposite party no. 2 has also instituted a case against the petitioner in the court of learned Sub Divisional Judicial Magistrate, Banka. Further case of opposite party no. 2 is that the petitioner has four bighas of land in his share and he has annaul income of Rs. 50,000/- and he has two bullock and one cow, from which, he earns Rs. 10,000/- per year as well as pumping set machine, from which, he earns Rs. 30,000/- per



years, whereas, the opposite party no. 2 has no source of income and even her father is not capable to maintain her and her child, as such, she prayed for maintenance of Rs. 3,000/- per month towards her maintenance as well as the maintenance of child.

It appears from the perusal of record that petitioner has denied all the allegations and has stated that opposite party no. 2 has re-married with another person, namely, Ankaj Sah in the year 2009 and she is living with the said Ankaj Sah after second marriage, as such, she is not entitled for any maintenance. Further case of the petitioner is that he is a labourer and earns Rs. 2000 to 2500 per month.

It further appears that three witnesses were examined on behalf of opposite party no. 2 and three witnesses were also examined on behalf of the petitioner – husband and one certificate of marriage was also produced and the same has been marked as Ext. 1.

Learned Trial Court after considering the materials available on record allowed the petition filed by opposite party no. 2 under Section 125 Cr.P.C., directing the petitioner to pay Rs. Rs. 2,000/- to opposite party no. 2 and Rs. 2,000/- to her son total Rs. 4,000/- towards their maintenance.

Being aggrieved and dissatisfied, the petitioner



preferred the instant revision application assailing the impugned order on the ground that the petitioner – husband has brought on record the evidence to show that opposite party no. 2 wife has remarried with another person, namely, Ankaj Sah and she is not entitled for any maintenance and the learned Family Court without considering the same has allowed the maintenance case filed by opposite party no. 2 under Section 125 Cr.P.C., which is not just and proper. Further ground is that learned Family Court has erroneously calculated the monthly income of the petitioner as Rs. 7500/- per month, whereas, he is a labourer and merely earns Rs. 2000 to Rs. 2500 per month.

From perusal of the record, it appears that opposite party no. 2 - wife has come with a case that she was ousted by the petitioner from the house for non fulfillment of demand of dowry and further she has no source of income, whereas, petitioner has sufficient means to maintain opposite party no. 2 and further has not denied the factum of marriage with opposite party no. 2 though he denied to have any son from the said marriage. Further, in the evidence in court, the petitioner has admitted that after marriage, she lived with the petitioner for two years and gave birth to a son, as such, the petitioner admitted to have a son from the wedlock. He has also stated in



his evidence that the opposite party no. 2 – wife has remarried with one Ankaj Sah and a certificate to that effect has also been issued by the Banka Municipality, however, he has not stated about the date of marriage.

Evidence of O.P.W. No. 1 disclosed that ten years prior, the opposite party no. 2 left her husband and remarried with another person, namely, Ankaj Sah, son of Battu Sah and she also has a daughter from the said marriage but he has not stated the date of marriage and also admitted that he had not participated in the said marriage.

O.P.W. No. 2 is the petitioner himself, who has stated in his evidence that in the year 2008, when he has gone to jail, his wife – opposite party no. 2 remarried with Ankaj Sah and she also has a daughter from the said marriage and the said fact was informed to him by someone, as such, the learned Family Court has considered his evidence as hearsay evidence.

O.P.W. No. 3, who was the Ward Counselor of Banka Municipal Corporation, has proved the certificate issued by him. In his evidence, this witness has stated at the relevant time, he was Ward Counselor of Ward no. 19, whereas, the petitioner – husband has stated in his evidence that the certificate in question was issued by the Ward Counselor of Ward No. 20, as



such, there is apparent contradiction. In his evidence in para – 10 of his cross examination, O.P.W. No. 3 has disclosed that when a certificate of marriage is issued, the same is entered into the register of Nagar Panchayat but in this case, the entry has not been made. Considering, the evidence of this witness, the court has come to conclusion that the certificate produced by the petitioner – husband appears to be not genuine and he has failed to prove the second marriage of opposite party no. 2 and further the petitioner – husband himself admitted the factum of his marriage with opposite party no. 2 and the birth of a son from the marriage and learned Family Court after considering all these facts has allowed the maintenance case filed by opposite party no. 2. So far award of maintenance of Rs. 4,000/- is concerned, learned Family Court, Banka has taken into consideration that petitioner has four bighas of land in his share and two bullock and a cow as well as pumping set and even if he works as a labourer and earns Rs. 250 per day, his total monthly income would be Rs. 7500/- and thus directed the petitioner to pay maintenance of Rs. 4,000/- to the opposite party no. 2 and her son towards their maintenance.

Considering the fact and circumstances of the case, though I do not find any illegality and impropriety in the order



passed by learned Family Court, Banka so far allowing maintenance is concerned, but at the same time, the amount of maintenance so fixed by the learned Family Court, Banka appears to be little excessive, as such, the petitioner is directed to pay Rs. 2500/- to opposite party no. 2 and Rs. 500/- to her son total Rs. 3,000/- per month towards their maintenance.

With the above modification in the maintenance amount, this application is dismissed.

(Vinod Kumar Sinha, J)

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