

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.833 of 2018

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

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Rajesh Rajak S/o Tilak Rajak, Resident of Village- Varuna Rasulpur, P.S.- Sarairanjan, District- Samastipur.

... .. Petitioner/s

Versus

Rinku Devi, W/o Rajesh Rajak, S/o Tilak Rajak, Resident of Village- Varuna Rasulpur, P.S.- Sarairanjan, District- Samastipur, present Address- D/o Rajendra Rajak, Resident of Village- Mahisaur, P.S.- Jandaha, District- Vaishali at Hajipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bijay Bhushan Prasad, Advocate
For the opposite party/s : Ms. Bela Singh and
Mr. Rajeev Ranjan, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 30-08-2019

Heard learned counsel for the petitioner and learned counsel for the opposite party.

2. The petitioner has moved the Court under Section 19(4) of the Family Courts Act, 1984, against the order dated 09.01.2018 passed in Maintenance Case No. 84 of 2016, by the Principal Judge, Family Court, Vaishali at Hajipur by which the petitioner has been directed to pay Rs. 8,000/- per month maintenance to the opposite party, who is his wife.

3. Learned counsel for the petitioner submitted that the order is *ex parte* and there was no valid service of notice on the petitioner in the proceeding and, thus, he was unaware of the same



and has filed the present revision within the limitation period. It was submitted that the order has been passed under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code'), which does not make the wife living in adultery entitled to receive any maintenance. It was submitted that in Divorce Case No. 294 of 2013, Registration No. 354 of 2014, filed by the petitioner against the opposite party and one Sunny Rajak, the Principal Judge, Family Court, Samastipur by judgment dated 11.10.2017, had dissolved the marriage between the petitioner and the opposite party on the ground that she was living in adultery with Sunny Rajak. It was submitted that in the said case, Sunny Rajak had contested whereas the opposite party had chosen not to contest. Learned counsel submitted that once a competent Court had held the opposite party to be living in adultery with Sunny Rajak, Section 125(4) of the Code disentitles her to any maintenance from the petitioner.

4. Learned counsel for the opposite party submitted that she has challenged the decree of divorce dated 11.10.2017. However, she fairly admitted that the same is still pending.

5. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the order impugned dated 09.01.2018 passed by the



Principal Judge, Family Court, Vaishali at Hajipur in Maintenance Case No. 84 of 2016, cannot be sustained. As has rightly been submitted by learned counsel for the petitioner, Section 125(4) of the Code clearly debars a wife living in adultery from getting maintenance from her husband. In the present case, there was a decree in favour of the petitioner by which the marriage between the parties was dissolved and one of the grounds was that the Court had found the opposite party to be living in adultery with Sunny Rajak. When, almost three months prior to passing of the impugned order on 09.01.2018, there already being a finding of adultery against the opposite party and the marriage also being dissolved, in the considered opinion of the Court, such order granting maintenance to the opposite party against the petitioner cannot be sustained. Further, the Court finds that mere pendency of an appeal against the order dissolving the marriage, *inter alia* on the ground of adultery, which till date has neither been disposed off nor is there any interim stay of such order, cannot be a ground to uphold the order impugned.

6. Thus, when the statute/law itself bars grant of maintenance to a wife living in adultery and the opposite party being found to be living in adultery with Sunny Rajak, i.e., in adultery, the maintenance case was required to be dismissed.



7. Accordingly, for reasons aforesaid, the application is allowed. The order dated 09.01.2018 passed by the Principal Judge, Family Court, Vaishali at Hajipur in Maintenance Case No. 84 of 2016, is set aside.

(Ahsanuddin Amanullah, J.)

P. Kumar

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