

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.64 of 2018

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

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Basuki Nath Ray son of Ramji Ray, resident of Mohalla Newalal Chowk, P.S. Purnea, P.S. Purnea, District Purnea

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Smt. Khushboo Kumari, D/o Dilip Kumar Ray, wife of Basuki Nath Ray, resident of Village Sakin-Omnagar, P.S. Araria, District Araria

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Samir Kumar, Advoate
For the State	:	Mr. Md. Arif, APP
For the O.P. No. 2	:	Ms. Smiti Bharti, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 02-07-2019

Heard learned counsel for the petitioner; learned APP for the State and learned counsel for the opposite party no. 2.

2. The petitioner has moved the Court under Section 19 (4) of the Family Courts Act, 1984 for the following relief:

“ That this application is being preferred to set aside the order dated 28-11-2017 passed by court of Principal Judge, Family Court, Araria in Maintenance Case No. 232 of 2016, filed under Sections 24 of the Hindu Marriage Act and same was disposed of under Section 125 of Cr. P.C. ”

3. The opposite party no. 2, being the wife of the petitioner, filed Maintenance Case No. 232 of 2016 in the Court of Principal Judge, Family Court, Araria, initially under Section 24 of the Hindu Marriage Act (hereinafter referred to as the ‘Act) and



later after amendment the same was modified to be under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') (though not specifically mentioned). After full trial, the order impugned was passed awarding monthly maintenance of Rs. 8,000/- in favour of the opposite party no. 2 to be paid by the petitioner.

4. Learned counsel for the petitioner submitted that though initially a petition was filed under Section 24 of the Act but later on even after correction, the correct statute was not mentioned as it has been written as Section 125, Maintenance Act and no such Act being in force, the order itself becomes unsustainable having been passed without any jurisdiction in law. It was submitted that the petitioner was ready to keep the opposite party no. 2 with him but she refused to do so. It was further submitted that once the petitioner was ready to keep the opposite party no. 2 with him, it was incumbent upon the Court to record the reason why refusal to do so would still entitle the opposite party no. 2 to maintenance. For such proposition, he relied upon the decision of the Allahabad High Court in **Abdul Ahad v. Nasreen Bano** reported as **1994 CRI. L.J. 688**. Learned counsel submitted that the order records that with regard to demand of



dowry and miserable life faced by the opposite party no. 2, as per her deposition, he may be permitted to cross-examine her.

5. Learned APP and learned counsel for the opposite party no. 2 submitted that the petitioner is only taking such stand to somehow either linger the matter or derive undue benefit. It was submitted that initially after appearing in the present case, he was avoiding appearance in the present case, though he was appearing in the case filed by the opposite party no. 2 under Section 498A of the Indian Penal Code. It was further submitted that petitioner's offer to live with opposite party no. 2 is only for the purpose of getting over any adverse order from the Court, more so as he has already married another woman, though not officially announced.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present case. On the issue raised by learned counsel for the petitioner with regard to wrong mentioning of the provision of law, suffice to say that such inadvertent error has been held to be absolutely of no value, much less, have any fatal effect on the proceeding. The fact that Section 125 of the Code has been quoted and an application for amendment was filed after service of notice on learned counsel for the petitioner before the Court below and in his presence the order passed, itself fulfills



the requirement of there being due notice to the other side with regard to any proceeding or amendment. Moreover, if at all, the petitioner was aggrieved by any amendment allowed by the Court below, it was incumbent upon him to move before the appropriate forum and not having done so, such issue cannot be raised before this Court, at the time of considering the final order passed by the Court below in the said proceeding.

7. As far as the decision of the Allahabad High Court in **Abdul Ahad** (supra) is concerned, the Court would only observe that in the said case, the Court had held that without there being justification for refusal to live with the husband would not entitle the wife to maintenance whereas in the present case, there being a finding that she was ill treated due to non-fulfillment of demand of dowry and was leading a miserable life, which has gone unrebutted/uncontroverted, it cannot be said that the Court below has totally not considered the issue.

8. Thus, on an overall view of the matter, the Court does not find any error in the order impugned to warrant any interference. Accordingly, the application stands dismissed.

9. Before parting, the Court deems it necessary to take note of the fact that a supplementary affidavit has been filed on behalf of the petitioner today, in which it has been stated that in



terms of the order passed in the present case on 21.08.2018, he has paid Rs. 4,000/- to the opposite party no. 2. On a query as to whether Rs. 4,000/- per month has been paid up-to-date, reply is that the order only indicated payment of Rs. 4,000/-. The order dated 21.08.2018 reads as under:

“The petitioner / husband has challenged the final order dated 28.11.2017 passed by the learned Principal Judge, Family Court, Araria in Maintenance Case No. 232 of 2016, whereby he has been asked to pay an amount of Rs. 8,000/- (eight thousand) per month to the Opposite Party No. 2 towards her maintenance.

Learned counsel for the petitioner has submitted that without ascertaining the financial health and capacity of the petitioner, the present order has been passed.

Issue notice to Opposite Party No. 2, by both modes, i.e., under ordinary process as well as registered cover with A/D, on steps being taken by the petitioner for filing requisites etc. within a period of two weeks from today, returnable on 25.09.2018.

In the meantime, the petitioner shall pay an amount of Rs. 4,000/- (four thousand) to Opposite Party No. 2.”

10. Bare perusal of the aforesaid, leaves no doubt that Rs. 4,000/- being directed to be paid to the opposite party no. 2 clearly and obviously meant payment of Rs. 4,000/- per month and not as a one time measure. Such interpretation is absolutely misconceived and patently perverse. In fact, the Court is inclined to impute motive to the petitioner for such blatant



misrepresentation and misconstruing of the direction contained in order dated 21.08.2018, for which the Court would have separately taken *suo motu* cognizance. However, it refrains from doing so.

11. It goes without saying that the Court below shall ensure that payment, as per the order impugned, is made to the opposite party no. 2, failing which all necessary steps, including coercive measures, shall be taken by the Court concerned to ensure that the order is strictly complied with by the petitioner.

12. The Lower Court Records be returned forthwith.

(Ahsanuddin Amanullah, J)

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