

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.466 of 2018

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

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Santosh Kumar Sah @ Santosh Sah S/o Bunilal Sah, R/o Village- Harnahi,
P.S.- Raxaul, District- East Champaran.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Kavita Devi W/o Santosh Kumar Sah D/o Nawal Kishore Sah, R/o Vill.-
Lakhaura Bichalia Tola, P.S.- Lakhaura, District- East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar Singh
For the Respondent/s : Mr.Sri Kanhaiya Kishore

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 10-12-2019

The present petition has been filed for setting aside the judgment dated 11.09. 2017 passed in Maintenance Case No. 62 of 2013 by the learned Principal Judge, Family Court, East Champaran, Motihari whereby and where-under the petitioner has been directed to pay a sum of Rs. 3000/- per month to the opposite party no.2 (wife) for her and her minor daughter's maintenance, apart from payment of a lump sum amount of Rs. 4000/- on the head of litigation cost.

2. The brief facts of the case are that the marriage of the petitioner and the Opposite Party no. 2 was solemnized on 11.05.2006 as per the Hindu rites and customs, where-after the opposite party no.2 had stayed with the petitioner in his home



peacefully for a period of about six months, however, thereafter the petitioner and his family members started demanding a motorcycle by way of dowry. However, since the parents of the Opposite party no.2 were not in a position to pay dowry, the opposite party no.2 was harassed by her husband and his family members and ultimately the opposite party no.2 was beaten and thrown out of her matrimonial home on 12.12.2011 and then the opposite party no. 2 had filed the connected maintenance case bearing Maintenance Case No. 62 of 2013 under Section 125 of the Cr. P. C. praying therein for grant of Rs. 10,000/- per month as maintenance.

3. The learned counsel for the petitioner has submitted that the amount of maintenance granted to the opposite party no.2 by the learned Family Court is excessive and the petitioner is not in a position to pay the same. It is further submitted that the petitioner is ready and willing to keep his wife and minor children.

4. I have heard the learned counsel for the petitioner and perused the materials on record as also the impugned judgment dated 11.09.2017. It is clear from the impugned judgment dated 11.9.2017 that the learned Family Court had examined three witnesses, who were produced by the complainant i.e. the



opposite party no.2 herein, whereafter, the petitioner herein had also produced three witnesses. The learned Family Court has come to a finding, in the impugned judgment dated 11.09.2017, that the petitioner herein and the opposite party no.2 herein are legally wedded husband and wife and out of their wedlock, a minor daughter, namely, Anshu Kumari has been born and the opposite party no.2 has been living in her parental house along with her minor daughter since 12.12.2011. It has been further held that though the petitioner herein has stated that the opposite party no.2 is a lady of bad character, but he had miserably failed to prove the same. The learned court below has also come to a finding that the opposite party no. 2 herein has reason to live separately along with her minor daughter and she has got no source of income, hence she is entitled for maintenance from the husband i.e. the petitioner herein. In such view of the matter, the learned Family Court has come to a finding that the husband cannot escape from his responsibility of giving sustenance money to his wife and considering the high price of the essential commodities and other articles, the learned Family Court had awarded a sum of Rs. 3000/- per month as maintenance to the opposite party no.2 herein (Rs, 2000/- per month for wife and Rs. 1000/- per month for the



minor daughter).

5. At this juncture, it would be relevant to refer to a judgment rendered by the learned Three Judges' Bench of the Hon'ble Apex Court, reported in **2018(SCC (on-line) SC 1643 (Reema Salkan vs. Sumer Singh Salkan)**, paragraph nos. 13, 14 and 16 whereof are reproduced herein below:-

"13. Be that as it may, the High Court took into account all the relevant aspects and justly rejected the plea of the respondent about inability to pay maintenance amount to the appellant on the finding that he was well educated and an able bodied person. Therefore, it was not open to the respondent to extricate from his liability to maintain his wife. It would be apposite to advert to the relevant portion of the impugned judgment which reads thus:

*"79. The respondent during the cross examination has admitted that he too is **B.Com**, M.A.(Eco.) and MBA from Kentucky University, USA; the respondent is a Canadian citizen working with Sprint Canada and is earning Canadian \$(CAD) 29,306.59 as net Annual Salary. However, he has claimed that he has resigned from Sprint Canada on 23.11.2010 and the same has been accepted on 27.11.2010 and the respondent since then is unemployed and has got no source of income to maintain himself and his family.*

80. In the instant case, the petitioner has filed the case under Section 125 Cr.P.C., 1973 for grant of maintenance as hedoes not know any skill and specialized work to earn her livelihood i.e. in paragraph 26 of maintenance petition against her husband.



However, the respondent husband who is well educated and comes from extremely respectable family simply denies the same. The respondent husband in his written statement does not plead that he is not an able bodied person nor he is able to prove sufficient earning or income of the petitioner.

*81. It is an admitted fact emerging on record that both the parties got married as per Hindu Rights and Customs on 24.03.2002 and since then the petitioner was living with her parents from 10.08.2002 onwards, and the parents are under no legal obligation to maintain a married daughter whose husband is living in Canada and having Canadian citizenship. The plea of the respondent that he does not have any source of income and he could not maintain the wife is no answer as he is mature and an able bodied person having good health and physique and he can earn enough on the basis of him being able bodied to meet the expenses of his wife. In this context, the observation made in **Chander Prakash v. Shrimati Shila Rani, AIR 1968 Del 174** by this Court is relevant and reproduced as under:*

"7.....an able bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in position to earn enough to be able to maintain them according to the family standard. It is for such able bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child."



82. *The husband being an able bodied person is duty bound to maintain his wife who is unable to maintain herself under the personal law arising out of the marital status and is not under contractual obligation. The following observation of the Apex Court in **Bhuvan Mohan Singh v. Meena**, AIR 2014 SC 2875, is relevant:*

"3.....Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short "the Code") was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created where under she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is



able bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.

(emphasis applied)

83. The respondent's mere plea that he does not possess any source of income ipso facto does not absolve himself of his moral duty to maintain his wife in presence of good physique along with educational qualification."

14. The view so taken by the High Court is unassailable. Indeed, the respondent has raised a plea to question the correctness of the said view, in the reply affidavit filed in this appeal, but in our opinion, the finding recorded by the High Court is unexceptionable.

16. We, therefore, direct the respondent to pay the enhanced maintenance amount, as determined in terms of this order, to the appellant within a period of eight weeks from today after duly adjusting the amount already deposited in Court/paid to the appellant till date. The appellant will be entitled to forthwith withdraw the maintenance amount deposited by the respondent in Court, if any. The impugned judgment of the High Court is accordingly modified in the aforementioned terms."

6. A bare perusal of the aforesaid judgment rendered by the Hon'ble Apex Court in the case of Reema Salkan (supra) would demonstrate that an able body young man is presumed to be capable of earning sufficient money so as to be able to reasonably maintain his wife and child and he cannot be heard



to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is equally a well settled law that Section 125 Cr. P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman who left her matrimonial home so that some suitable arrangement can be made by the Court and she can sustain herself as also her children, if there are any, and it is the obligation of the husband to ensure that his wife leads a life in a similar manner as she would have lived in the house of her husband, hence it is the sacrosanct duty of the husband to render her financial support and he cannot take subterfuges to deprive her of the benefit of living with dignity, thus any plea by the husband that he does not possess any source of income, *ipso facto* does not absolve him of his moral duty to maintain his wife and child.

7. Having regard to the facts and circumstances of this case, this Court finds that there is no infirmity in the impugned judgment dated 11.09.2017 and the same also does not suffer from any illegality or arbitrariness, which is apparent from the facts and circumstances of the case as also from a bare perusal of the impugned judgment dated 11.09.2017.

8. Having regard to the aforesaid principle of law



evolved by the Hon’ble Apex Court in the case of *Reema Salkan* (supra) as also in the case of *Bhuwan Mohan Singh* (supra) and *Chandar Prakash* (supra), this Court finds from the facts of the present case that the petitioner is under an obligation to maintain his child as also his legally wedded wife i.e. the opposite party no. 2 and the learned Principal Judge, Family Court, East Champaran at Motihari, has awarded a meager amount of maintenance of Rs.3,000/- per month, apart from payment of a lump sum amount of Rs. 4000/- on the head of litigation cost, vide the impugned judgment dated 11.09.2017, thus this Court is of the considered view that the maintenance amount so awarded by the learned court below is not excessive, specially keeping in mind the spiraling inflation rate and high cost of living index, prevailing today, hence, the present petition stands dismissed, being devoid of any merit.

(Mohit Kumar Shah, J)

Tiwary/-

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