

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.393 of 2016

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

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Madan Lal @ Madan Lal Nishad Son of Bali Ram Chaudhary resident of village Nasirpur, Post Office Nasirpur, Police Station - Gahmar, District - Ghazipur.

... .. Petitioner/s

Versus

Sarita Devi wife of Madan Lal Nishad, daughter of Kailash Chaudhary resident of village Malachakiya, Post Office Central Jail, Police Station Buxar M, Distt. Buxar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Najmul Hoda
For the Respondent/s	:	Mr. Chandra Shekhar Azad
		Mr. Sadashiv Tiwari.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

7 08-07-2019 This revision application is directed against the order dated 04.03.2016 passed by learned Principal Judge, Family Court, Buxar in Maintenance Case No. 85(M)/2007, by which, he has directed the petitioner to pay Rs. 5,000/- to the opposite party towards her maintenance as well as the maintenance of her son.

Facts giving rise to the present revision application is that the opposite party filed an application under Section 125 of the Cr.P.C. for grant of maintenance to her and to her son on the ground that she is the legally wedded wife of the petitioner and she was ousted from her matrimonial house by the petitioner and her family members for demand of dowry and was forced to



live in her maike. Further case of opposite party is that petitioner has a pumping set generator shop at Gwalior and he is earning there and apart from that he has 25 bighas of land, tractor and double stories house at Nasirpur, besides that petitioner also has five kathas of land in village Karhiya near Kamakhya Asthan, in which, 17 katras have been constructed and these katras have been given on rent. Whereas, opposite party has no source of income and she is entirely dependent on her father and other family members for her maintenance as well as for maintenance of her son.

The petitioner had appeared in the aforesaid maintenance case and filed his show cause that allegation of the demand of dowry is false and concocted and so far earning of petitioner is concerned, he merely earns Rs. 200/250 per day, whereas, opposite party has her source of income through tailoring and further. Petitioner denies to have any land rather he has stated that he has only a house at his village. So far, 17 katras at Kamakhya Asthan is concerned, it has been stated by the petitioner that those belongs to his brothers and his father has divided the entire property but there is no document showing the partition. Further case of the petitioner is that the opposite party is living an adulterous life and she herself does



not want to live with the petitioner and as such, she is not entitled for maintenance as per the provisions of Section 125 Cr.P.C.

The learned Family Court, Buxar examined the five witnesses on behalf of petitioner and two witnesses on behalf of opposite party including opposite party herself. Learned Family Court, Buxar after conclusion of proceeding, he has disposed the maintenance case vide his impugned order, finding that the opposite party is the legally wedded wife of the petitioner and she is residing in her parental house for more than 11 to 12 years and the petitioner has himself admitted that he has not given any money for the maintenance of her wife (opposite party) and her son and thus it is clear that having sufficient means, the petitioner has neglected and refused to maintain the opposite party and her son, whereas, opposite party has no source of income and even her father is not in a position to maintain properly the opposite party and her son. On the basis of aforesaid finding, learned Principal Judge, Family Court, Buxar ordered the petitioner to pay Rs. 5,000/- per month to opposite party towards her maintenance as well as towards the maintenance of her son.

Being aggrieved, the petitioner has preferred the



present revision application on the ground that the amount awarded by the learned Principal Judge as maintenance is excessive and the same is without any assessment of real income of the petitioner and secondly the petitioner by filing supplementary affidavit has come with a case that during pendency of this application, opposite party has remarried with another person, as such, she is not entitled for any maintenance.

On the other hand, learned counsel appearing on behalf of opposite party has opposed the prayer of the petitioner and has filed the counter affidavit denying the factum of second marriage of opposite party and stated that it is the petitioner, who has married with another lady. It has further been submitted that Rs. 5,000/-, which has been awarded by the Family Court is not only for her maintenance but also for the maintenance of her son. Whereas, the evidence available on record shows that the petitioner is working as tailor and even if it is presumed that he is not working as tailor, he might be working as labourer and evidence also shows that petitioner has 25 bighas of land, tractor and double stories house at Nasirpur, besides that petitioner also has five kathas of land in village Karhiya near Kamakhya Asthan, in which, 17 katres have been constructed and these katras have been given on rent. Therefore,



the amount awarded by the Family Court, Buxar is not excessive.

Having heard both sides, considering the submissions of the parties as well as on perusal of materials available on record, it appears that there is finding that opposite party is the legally wedded wife of the petitioner and the same has also been accepted by the petitioner. It has also come that the opposite party has been living in her parents house for last 11-12 years and petitioner has himself admitted that he is not paying any money to the opposite party towards her maintenance as well as towards the maintenance of her son. The petitioner has come with a case that she was happy in her matrimonial house and she left the house on her own. On the other hand, the materials available on record disclosed that the petitioner has remarried with another lady and that itself is the sufficient ground for the opposite party to live separately. So far income of the opposite party is concerned, there is nothing available on record to show that she has any independent source of income rather it appears that she is entirely dependent on her parents for her daily needs as well as the needs of her son.

While coming to the award of Rs. 5,000/-, the learned Family Court has taken into consideration that petitioner is a



labourer and furthermore, the petitioner has lands and 17 Katras, which have been given on rent, no doubt the case of the petitioner is that they are in the name of his brothers. He has adduced evidence also but he has not produced any paper with regard to the partition. On the other hand, evidence adduced on behalf of petitioner also discloses that he has double storied house and 4 bighas of land that shows that petitioner has sufficient income to maintain his wife and son, considering all these facts learned Family Court, Buxar, has passed the order directing the petitioner to pay Rs. 5,000/- as maintenance to opposite party towards her maintenance as well as the maintenance of her son.

In view of discussions made above, I find no illegality in the impugned order and the award of Rs. 5,000/- appears to be just and proper.

So far submission of petitioner that opposite party no. 2 has remarried with another person and is not entitled for any maintenance is concerned, it is open to the petitioner to move before the learned Family Court, Buxar with such a plea for modification in the order.

It has been submitted by learned counsel for opposite party that in spite of direction of the Family Court, Buxar, the



petitioner is not paying even the single penny to the opposite party towards her maintenance as well as towards the maintenance of her son, for that opposite party is always at liberty to move before the learned Family Court, Buxar by filing a petition for realization of arrears of maintenance amount and if any such application is filed, learned Family Court, Buxar shall pass an appropriate order within a period of three months.

Accordingly this application is dismissed.

(Vinod Kumar Sinha, J)

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