

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.706 of 2016

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

Ruvaisa Khatoon @ Samaisa Khatoon @ Runaisa Khatoon, wife of Md. Afroz, Resident of Village- Mahdura, P.S Korha, District Katihar.

... .. Petitioner

Versus

1. State Of Bihar
2. Md. Afroz, Son of Md. Harun, Resident of Village- Korba, P.S. Muffasil District Katihar.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Sanjeev Kumar Singh, Advocate
For O.P. No.2	:	Mr. Bimal Kumar with Ms. Maruti Kumari, Advs
For the Respondent/s	:	Mr. Ajay Kumar -2, APP

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

7 26-07-2019 This application has been filed against the order dated 4.3.2016 passed by Additional Principal Judge, Family Court, Katihar in Maintenance Case No. 38 of 2014 whereby learned Family Court has dismissed the application filed under Section 125 Cr.P.C. by the petitioner-wife on the ground of her non-examination in court.

The fact, in short, is that petitioner-wife has filed an application under Section 125 Cr.P.C. before the Family Court, Katihar for grant of maintenance, which was numbered as Maintenance Case No. 38 of 2014 with a plea that she was married with opposite party No.2 14 years earlier but one month after marriage she was taken to her parents house and opposite



party No.2-husband went to Delhi for earning his livelihood. It is also her case that after return from Delhi he took her to his house where she was subjected to torture and cruelty for demand of Rs.50,000/- and for that a Panchayati was held and in Panchayati opposite party No.2 promised that he will keep the petitioner well and after two months he went to Delhi and kept her at her parents house. It is further alleged that after five years opposite party No.2-husband returned back from Delhi and took her to matrimonial house and again she was ill-treated and ultimately after assaulting she was ousted from the house and since then she is residing with her parents at her Maike having no means and opposite party No.2-husband performed another marriage. It is also her case that opposite party No.2 has income of Rs.14,000-15,000/- per month from shuttering work, as such she has prayed for maintenance of Rs.5000/- per month.

Opposite party No.2 has appeared and filed his show cause accepting the factum of marriage but denied the allegation of demand of Rs.50,000/-. His further case is that he is still ready to keep her but she is not ready to reside with him without any valid reason.

During proceeding under Section 125 Cr.P.C. the petitioner got examined four witnesses and opposite party No.2



got examined two witnesses but neither petitioner nor opposite party No.2 has been examined as witness in this case. Learned Family Court after looking into the petition filed under Section 125 Cr.P.C. by the petitioner on the ground that she failed to depose and prove her case has delivered the judgment and order dated 4.3.2016.

Being aggrieved by the same, the present revision application has been filed.

Learned counsel for the petitioner has assailed the impugned judgment and order on the ground that learned Family Court has dismissed the maintenance case only on the ground that petitioner has not appeared to support her case though there is other materials available on the record, factum of marriage of petitioner with opposite party No.2 has admitted in the show cause filed by the opposite party No.2-husband and four witnesses have been examined on behalf of the petitioner and two witnesses on behalf of opposite party No.2 and as such the impugned order passed by learned Family Court is not sustainable.

On the other hand, learned counsel for opposite party No.2 has countered to the argument of learned counsel for the petitioner on the ground that as the petitioner has not appeared



to support her case learned Family Court has rightly rejected the maintenance case filed by the petitioner.

Having heard both sides and on perusal of the records it appears that the factum of marriage between the petitioner and opposite party No.2 is admitted in the show cause filed by opposite party No.2 and case of the petitioner is that opposite party No.2 used to keep her for sometime and again he dropped her to her Maik and subjected her to torture and harassment and further he was earning 14000-15000/- per month. It appears that learned Family Court without considering the evidence, which has been adduced on behalf of the parties, has dismissed the maintenance case on the ground that she has not been examined

The object of Section 125 Cr.P.C. is to protect the women from the destitution and vagrancy and as such learned Family Court ought not to have dismissed the petition in such a manner without considering the evidence available on the record. It further appears that opposite party No.2 has also not been examined and learned counsel appearing on his behalf has also not appeared for argument.

Considering the discussions made above, I find that the impugned order cannot be sustained.



Accordingly, this application is allowed and the impugned order is set aside remitting the matter back to learned Family Court for considering it afresh by providing opportunity to both the parties to lead evidence in support of their case and after considering the same pass an appropriate order. Both the parties are directed to co-operate in the disposal of the maintenance case and learned Family Court shall consider the same and dispose it of as early as possible, preferably within a period of nine months.

(Vinod Kumar Sinha, J)

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