

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.751 of 2016

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

Sanjay Sao Son of Late Moti Sai, resident of village-Pali, P.S. Birupur Barahiya, District-Lakhisarai, at present at Kakraula More Bhagwati Garden House No. 47, Behind of Kali Mandir, New Delhi, Office address- Taj Patel Marg Diplomatic Inclave, Dhaula Kuan, New Delhi- 110021.

... .. Petitioner

Versus

1. State Of Bihar
2. Manju Devi, W/O Sanjay Ram, D/O Bajinath Gupta, resident of Gopalpur, P.S. Chanan Lakhisarai, District- Lakhisarai, at present at Oso Nagar near Railway Fatak Kanausi, P/O 5 Manak Nagar, P.S. Krishna Nagar, District- Lucknow Uttar Pradesh.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Jai Prakash Singh
For the Respondent/s : Mr.Dr.Mrityunjaya Kr.Gautam

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

- 4 01-08-2019 1. This revision application is directed against the order dated 02.04.2016 passed in Maintenance Case No. 9/2005 by the learned Principal Judge, Family Court, Lakhisarai, allowed the petition filed by opposite party no. 2 under Section 125 Cr.P.C. and directed the petitioner to pay Rs. 8,000/- per month to opposite party no. 2 towards her maintenance from the date of judgment.
2. Facts in short is that opposite party no. 2 – wife filed a petition under Section 125 Cr.P.C. in the court of learned Additional Chief Judicial Magistrate, Lakhisarai, stating therein that her marriage was solemnized with the petitioner seven year



ago and, thereafter, she went to her Sasural but when no child was born from the wedlock, the petitioner and others started torturing her and in the year 2004, when the father of opposite party no. 2 superannuated from service, petitioner left her to her maike and asked her that until she would bring the money from her father, which he has got after retirement, he would not keep the opposite party no. - wife with himself. Further case of opposite party no. 2 is that the petitioner-husband works in Taj Palace hotel and earns Rs. 8,000/- but the petitioner does not give any money to the opposite party no. 2 rather he spends entire money on his bhabhi (sister-in-law) with whom, he has illicit relationship and she also has no source of income to maintain herself.

3. It appears that initially opposite party no. 2 has not appeared and as such, he was debarred from filing any show-cause but later on he was allowed to file show-cause. In which, he has stated that the case filed by the opposite party no. 2 is not maintainable and the same has been filed only to harass the petitioner. The petitioner admitted his marriage with the opposite party no. 2. However, he has stated that opposite party no. 2 left the house of the petitioner after six months of marriage without knowledge and permission of the petitioner and when



the petitioner went to the maike of opposite party no. 2 to bring her back, she denied to come with the petitioner. It is also his case that in the year 2000, when the petitioner went to bring her back, she came to know that she was living in the house of her Bahnoi (brother-in-law), thereafter, the petitioner also went there but opposite party no. 2 did not agree to come with the petitioner. The petitioner, thereafter, filed T.S. (Matrimonial) 56/2004 against the opposite party no. 2 for divorce. The petitioner claimed that opposite party no. 2 was having illicit -relationship with his Bahnoi (brother in law) since 1995. It has also been stated by the petitioner that he is neither in any regular employment nor he has immovable properties rather he earns from working as a labourer.

4. In this case except opposite party no. 2 no other witness has been examined on behalf of opposite party no. 2. Learned Principal Judge on conclusion of proceeding allowed the maintenance case filed by the opposite party no. 2 under Section 125 Cr.P.C. vide impugned order dated 02.04.2016 directing the petitioner to pay Rs. 8,000/- each month to opposite party no. 2 towards her maintenance.

5. Being aggrieved, the petitioner preferred the present revision application and the ground for assailing the impugned



order is that opposite party no. 2 except herself, has not got any other witness examined and the only on her evidence, the order has been passed and further ground for assailing the impugned order is that the Division Bench of this Court in a case reported in **2011(4) PLJR 248 Laljee Yadav vs. The State of Bihar and Others** has held that before allowing the claim of maintenance of wife, two conditions have to be satisfied. First the wife must show that she is unable to maintain herself and second that her husband has sufficient means but neglects or refuses to maintain her. However, in the present case none of the above two conditions have been considered by the learned Principal Judge, Family Court, Lakhisarai. Further ground for assailing the impugned order is that the opposite party no. 2 was residing with his Bahnoi (brother -in-law) and leading a life of adultery and due to which, the petitioner had filed a divorce case, which has been allowed by the High Court in First Appeal No. 258/2007 and earlier a case filed by the opposite party no. 2 against the petitioner and other family members under Section 498A of the Indian Penal Code, they have have been acquitted. However, learned Principal Judge, Family Court, Lakhisarai has not considered all these aspects and allowed the maintenance case filed by the opposite party no. 2 directing the petitioner to



pay Rs. 8,000/- per month to opposite party no. 2 towards her maintenance, which is not sustainable in the eye of law.

6. Having heard the parties, it appears that so far the ground of the petitioner that the divorce case filed by the petitioner on the ground of adultery was allowed by this High Court in First Appeal, no such documents or materials were brought on record in maintenance case, although, para -6 of the his petition disclosed that the First Appeal was allowed on 16.11.2010, whereas, impugned order has been passed by the Family Court, Lakhisarai on 02.04.2016.

7. So far the judgment in the case of **Laljee Yadav (supra)** as relied upon by learned counsel for the petitioner is concerned, the learned Principal Judge, considered the evidence of opposite party no. 2 that father was a clerk in LOCO and after superannuation, he received his retiral benefits but there is absolutely nothing on record to show that she has any income of her own to maintain herself. Moreover, she being legally wedded wife is entitled for maintenance from her husband. She has also come with a case and evidence that petitioner is working in Taj Palace hotel and earning Rs. 8,000/- per month till 2010 and since 2010, he has been getting Rs. 25,000/- per month and no cross-examination has been done by the



petitioner on this point. Apart from that learned Family Court has also considered that no document has been produced by opposite party no. 2 to show the income of the petitioner and the Family Court, Lakhisarai has not completely relied upon the evidence so far income of the petitioner is concerned rather he has opined that the opposite party no. 2 is the legally wedded wife of the petitioner and petitioner being an able bodied person has to maintain his wife.

8. Another contention is that she was residing with her Bahnoi and leading a life of adultery and on this point, opposite party no. 2 has been cross-examined and she has categorically stated that such allegations are false and further no evidence has been brought on record by the petitioner before the learned Family Court in support of his contention and thus the petitioner cannot be allowed to take advantage of those facts, which he has not brought on record before the learned Principal Judge, Family Court, Lakhisarai.

9. So far the submission that except opposite party no. 2 no witness has been examined is concerned, in a case like the present one that arising out of matrimonial dispute between wife and husband, quality of evidence is more important than the quantity of evidence and opposite party no. 2 being the wife of



petitioner is the best person to describe the true facts of the case.

10. Considering the facts and circumstances of the case, I find no illegality or impropriety in the impugned order dated 02.04.2016 so far allowing maintenance case filed by her.

11. However, it appears that the petitioner has not appeared before learned Family Court, Lakhisarai in Maintenance Case and no document has been brought by opposite party no. 2 in support of her claim regarding income of the petitioner, as such, while upholding the other findings of the Family Court, the matter is remanded back to the learned Family Court, Lakhisarai to pass an order afresh after giving opportunity to both the sides of being heard and to place the evidence in support of the income of the petitioner and, thereafter, learned Family Court shall pass an order afresh within a period of six months.

12. In the meantime, the petitioner is directed to pay Rs. 4,000/- per month to opposite party no. 2 as an interim measure till the matter is finally adjudicated.

13. As a submission has been made by the petitioner that a divorce case has been decided in favour of the petitioner, the petitioner is at liberty to bring the new circumstances before the learned Family Court under Section 127 Cr.P.C. and the Family Court shall consider the same, while passing the order.



14. With the above observation and direction, this revision application stands disposed of.

(Vinod Kumar Sinha, J)

sunilkumar/-

U		T	
---	--	---	--

