

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.721 of 2016

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

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Dharmendra Mishra, Son of Late Barhma Misra, R/o Village- Harkhauli, P.S.-
Mirganj, District- Gopalganj.

... .. Petitioner

Versus

1. State Of Bihar
2. Pinki Devi, wife of Dharmendra Mishra, R/o Village- Harkhauli, P.S.-
Mirganj, District- Gopalganj. At present address- D/o Lallan Upadhyay
Village- Baluhi, P.S.- Majhagarh, District- Gopalganj.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Vijay Bardhan Pandey, Advocate
For O.P. No.2	:	Mr. Sanat Kumar Mishra, Advocate
For the State	:	Mr.Rajendra Singh Shastriji, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

7 26-07-2019 This revision application is directed against the judgment dated 30.5.2016 passed by learned Principal Judge, Family Court, Gopalganj in Maintenance Case No. 452 of 2013 filed by opposite party No.2-wife whereby and whereunder Rs.3000/- per month was allowed to opposite party No.2 for her maintenance and Rs.2000/- per month was allowed to minor son of opposite party No.2 as maintenance from the date of filing of the case.

The fact, in short, is that opposite party No.2,applicant has filed a maintenance case for grant of maintenance on the plea that she was married with the petitioner and thereafter she was implicated in a case of murder to her brother-in-law



(Bhaisur) and she was taken into custody and during the period of custody she gave birth to a child and after trial she was convicted by judgment dated 4.5.2017 by FTC-V, Gopalganj in Sessions Trial No. 313 of 2006, arising out of Mirganj P.S. Case No. 236 of 2005 and sentenced life imprisonment under Sections 302/34 IPC and in appeal filed before this Court she was granted bail vide order dated 15.9.2011 and thereafter she was living in her Maiké with her minor son. Further case is that she has no source of income, as such she has filed the maintenance case in which petitioner has appeared on notice and filed show cause stating that father of opposite party No.2 had a business of liquor and she had murdered his elder brother by throwing acid on him. Petitioner has also come with a case that he has only 3 bighas of land and he used to live jointly with his three brothers and mother and he has no source of income.

It appears that learned Family Court after conclusion of the proceedings has allowed the maintenance case filed by opposite party No.2 and directed the petitioner to pay Rs.3000/- per month to opposite party No.2 and Rs.2000/- per month to her son as maintenance.

Being aggrieved by the same, the present revision application has been preferred by the petitioner on the ground



that opposite party No.2-wife has been convicted under Sections 302/34 IPC, as such she is not entitled to maintenance and further ground is that without assessing income of the petitioner maintenance of Rs.5000/- was awarded to opposite party No.2 and her son, which is quite excessive It is further submitted that without impleading son of opposite party No.2 maintenance was allowed in his favour also.

On the other hand, learned counsel for opposite party No.2 defeded the impugned order and submitted that evidence of petitioner in the Family Court shows that he had a double storied building in village, one tractor and one motorcycle and further 10 bighas of land and as such the grant of maintenance of Rs.5000/- per month is not excessive. It is also submitted that as son of the petitioner was minor he has not been made party and for that he cannot be denied maintenance. Further submission is that Section 125 Cr.P.C. does not bar a convict-wife to get maintenance and as such on that ground she cannot be denied maintenance.

Having heard both sides and on perusal of the record it appears that petitioner has not denied that opposite party No.2 is his wife. No doubt, it appears that she has been convicted in a case of murder of elder brother of the petitioner, against which



she has filed appeal but there is no bar under Section 125 Cr.P.C. to grant maintenance on that ground. It is admitted that she is residing at her Maiké with her minor son, in view of the litigation between the parties, as such she has valid reason for living separately at her Maiké. There is absolutely nothing on the record to show that she has any income, whereas evidence of OPW 2 clearly disclosed that he has admitted in his cross examination that petitioner has a double storied building in village and his house is situated at a distance of 1 K.M. from Hathua Railway Station and he has also deposed that he has 8 bighas of land and not 40 bighas. His cross examination further disclosed that petitioner has a motorcycle and in paragraph-11 of his deposition he admitted that in between Registry Office to Hathua Railway Station all the shops are of the petitioner and this witness also deposed in his cross examination that petitioner would not keep his wife (opposite party No.2) as she is devil. He has also deposed in his cross examination that petitioner has good source of income.

Considering the entire discussions made above, this Court finds that the award of Rs.3000/- as maintenance to opposite party No.2 and Rs.2000/- to her minor son per month does not appear to be excessive.



In view of above facts and circumstances, I find no merit in this application. It is, accordingly, dismissed.

(Vinod Kumar Sinha, J)

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