

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1064 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Nalanda

SUNIL PASWAN S/o Naresh Paswan R/o village- Makanpur, P.S.- Noorsarai,
District- Nalanda

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sarita Devi W/o Sunil Paswan, R/o village- Makanpur, P.S.- Noorsarai,
District- Nalanda, At present Daughter of Ramji Paswan, R/o village-
Uttarnama, P.S.- Rahui, District- Nalanda
3. Dikush Kumar Minor Son of Sunil Paswan Under the guardianship of their
mother. R/o village- Uttarnama, P.S.- Rahui, District- Nalanda
4. Vishal Kumar Minor Son of Sunil Paswan Under the guardianship of their
mother. R/o village- Uttarnama, P.S.- Rahui, District- Nalanda
5. Khushi Kumari Minor Daughter of Sunil Paswan Under the guardianship of
their mother. R/o village- Uttarnama, P.S.- Rahui, District- Nalanda

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Hansraj
For the Respondent/s : Mr.Binod Kumar

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 16-12-2019

The present revision petition has been filed against the order dated 20.03.2018 passed by the learned Principal Judge, Family Court, Nalanda (Biharsharif) in Maintenance Case No. 139(M) of 2015 whereby and whereunder the petitioner has been directed to pay a sum of Rs. 2000/- to the opposite party no.2 (wife) and Rs. 1000/- each to the three children i.e. the Opposite Party Nos. 3 to 5.

2. The brief facts of the case, according to the complaint petition of the Opposite Party no.2 filed under



Section 125 of the Cr. P. C. on her as well as on behalf of her three minor children, is that the marriage of the petitioner and the opposite party no.2 was solemnized in the year 2002 and at the time of marriage jewelry, clothes, silver, utensil etc. were given to the petitioner and his family members as gifts, whereupon out of the said wedlock three children were born. It is the complain of the opposite party no.2 that the petitioner used to beat her regularly, after marriage, on account of non-fulfillment of demand for dowry and ultimately on 15.05.2012, the petitioner had assaulted the opposite party no.2 and ousted her from matrimonial home, thereafter she had come to her parents' home along with her children. It is stated that the opposite party no.2 is living in a state of pecuniary, hence requests for grant of maintenance.

3. The learned counsel for the petitioner has submitted that the opposite party no.2 does not want to live with the petitioner and in any view of the matter, the maintenance granted to the opposite party no.2 and her children is excessive.

4. I have heard the learned counsel for the parties and perused the materials on record, apart from having perused the impugned order dated 20.03.2018.

5. It appears that the opposite party no.2 had adduced



evidence by producing witness in her support and the petitioner had also produced witness in his support to the effect that the opposite party no.2 was living in her parental house voluntarily and she has not been assaulted or tortured by the petitioner, nonetheless the learned Family Court, Nalanda at Bihar Sharif, on considering the evidence led by the parties, has come to the conclusion that the opposite party herein is living with her parents along with her children. The learned court below has also considered the submission of the petitioner to the effect that he is a truck driver and earning a meager amount of Rs. 6,000/- per month, but on the contrary the learned Family Court has also considered the evidence led by the opposite party no.2 to the effect that the petitioner is earning a sum of Rs. 20,000/- per month.

6. 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 he does 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.”

7. 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.

8. Having considered the aforesaid facts and circumstances of the case as also upon perusing the materials on record, I do not find any infirmity in the impugned order dated 20.03.2018 passed by the learned Principal Judge, Family Court, Nalanda at Bihar Sharif so as to interfere with the same. In fact, the learned counsel for the petitioner has also been unable to point out any infirmity or jurisdictional error or arbitrariness in the impugned order dated 20.03.2018.

9. Last but not the least, considering 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 legally wedded wife i.e. the opposite party no.2 and the learned Principal Judge, Family Court, Nalanda (Bihar Sharif), has



awarded a meager amount of maintenance of Rs.2,000/- per month to the opposite party no.2 (wife) and Rs. 1000/- each to the three children, vide the impugned order dated 20.03.2018, 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/-

AFR/NAFR	AFR
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