

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.541 of 2016

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

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Rajesh Pandey son of Sri Krishna Pandey resident of Village- Khajuri, P.O.-
Pyarepur, P.S.- Pannapur, District- Saran (Chapra).

... .. Petitioner

Versus

1. State Of Bihar and Anr
2. Nita Devi W/o Rajesh Pandey, D/o Mahesh Mishra R/o Village Hardia, P.O.-
Chamanpura, P.S.- Baikunthpur, District- Gopalganj.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Ashutosh Ranjan Pandey
For the Respondent/s : Mr.Pawan Kr. Chaurasia

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

7 15-07-2019 No one appears on behalf of repeated calls. It appears

that earlier also on 2.7.2019 no one had appeared on behalf of
the petitioner, as such on perusal of the record, necessary order
will be passed.

2. This revision application has been filed against
order dated 7.5.2016 passed by the learned Principal Judge,
Family Court, Gopalganj in Maintenance Case No377 of
2013/Old Case (Maintenance) No.79 of 2011 by O.P.no.2
whereby and whereunder the learned Family court has directed
for payment of Rs.5000/- per month as maintenance to O.P.no.2
(wife).

3. Facts giving rise to this application in short is that



the applicant (Opposite Party No.2) was married with the petitioner on 13.3.2008 and after marriage, she was subjected to torture for payment of dowry and due to non-fulfilment of demand, the petitioner and his family members used to assault her.

4. It is also the case that she informed the incident to her *Maike* and father of the applicant (Opposite Party No.2) tried to pacify the matter, however, ultimately the petitioner and his family members expelled her out of the matrimonial house by assaulting her and snatching her belongings. It is also her case that the petitioner is working in a Textile Mill at Ludhiana and he earns Rs.15,000/- per month, apart from that he has income from the house and agricultural land. Her further case is that the petitioner is not providing any maintenance to the applicant (Opposite Party No.2). On the other hand her father is a poor person and any how he maintains his family only.

5. On the basis of above facts, she has prayed for Rs.6,000/- as maintenance allowance. It further appears from the record that the petitioner has appeared and filed show cause and admitted the factum of the marriage but come with a fact that the applicant does not want to live with him as she has illicit relationship with another person of her *Maike* and he has denied the story of torture and also denied that he works at



Ludhiana and earns Rs.15,000/- and also denied that he has expelled the applicant rather she has gone her *Maike* on her own will and does not want to live with the petitioner (husband).

6. Learned Family Court after hearing both the parties has come to a finding that the marriage between the petitioner and Opposite Party No.2 has been admitted. It is also the admitted fact that the applicant has been living at her *Maike*. Evidence also discloses that the petitioner (husband) has solemnised second marriage with another lady and the applicant has been deserted having no source of income in her *Maike* whereas the applicant being able bodied person and having sufficient means of income and has neglected her.

7. Considering the same he has allowed the maintenance case and directed the petitioner (husband) to pay Rs.5,000/- per month as the monthly maintenance allowance.

8. Being aggrieved by the same, the petitioner has preferred this revision application on the ground that the applicant has deserted him as such she is not entitled for maintenance and also on the ground that he is only a labourer and no other source of income, as such the amount of maintenance is excessive.

9. In this case notice was issued to Opposite Party No.2 (wife) and Opposite Party No.2 appeared and filed



counter affidavit but at the time of argument, nobody appears on behalf of O.P.no.2. From the counter affidavit filed by the Opposite Party No.2 it appears that she reiterated that the petitioner works in Textile Mills at Lakhiana and earns Rs.15,000/- per month as such he is able to pay Rs.5,000/- per month to O.P.no.2 as maintenance allowance. She has also stated that she has been ousted from the house after three months of the marriage and she has been deserted by her husband- petitioner.

10. From perusal of the record it appears that the factum of the marriage between the petitioner and Opposite Party No.2 is admitted. It is also the admitted fact that Opposite Party No.2 is residing at her *Maike* and nothing has been brought on record to show that Opposite Party No.2 has any source of income and further Opposite Party No.2 has come with a case that the petitioner is earning Rs.15,000/- working in the Textile Factory at Ludhiana, which has been denied by the husband-petitioner showing that he is not working at Ludhiana and the learned Family Court considering the evidence available on record has not given any finding about the income of the petitioner whereas came to a finding that the applicant being able bodied person and having sufficient means of income and has neglected her and the learned Family Court has directed for



payment of Rs.5000/- per month as maintenance to O.P.no.2 (wife).

11. To my opinion it appears that award of maintenance appears to be little excessive as even if it is presumed that the petitioner is working as labourer on the wages of Rs.300/- per day, he must be earning of Rs.9,000/- per month. In such a situation, as per the established principle, she is entitled for 1/3 share of the income, as such amount of Rs.3,000/-(three thousand) may be granted to O.P.no.2 as her maintenance .

12. In view of the above facts and circumstances, impugned order is upheld with slight modification in the impugned order and the amount of Rs.5,000/- which was allowed as maintenance to Opposite Party No.2 is reduced to Rs.3,000/- per month.

13. Accordingly, this application with above observation is disposed of.

(Vinod Kumar Sinha, J)

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