

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.117 of 2018

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

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Upendra Prasad Yadav @ Upendra Prasad Ray S/o. Hotilal Prasad Yadav,
Resident of Village- Bir Kuwari, P.O. Baksanda Parsa, P.S. Parsa, District
Saran, Bihar.

... .. Petitioner/s

Versus

1. Sunita Rai W/o Upendra Prasad Yadav, D/o. Late Yogeshwar Prasad Yadav,
2. Niki Kumari, D/o. Upendra Prasad Yadav,
3. Vinita Kumar, D/o. Upendra Prasad Yadav,
All Resident of Village- Bhinik Tola Dudhaila Bazar, Near Bye Pass,
Sonapur, Distt. Saran, Presently residing at Quarter No. 3, Agriculture
Colony, Near Sadar Hospital, P.S. Saharsa, District Saharsa, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dineshwar Mishra with
Mr. Akshai Shashi, Advocates

For the Opp. Party/s : Mr. Anand Kumar Bhaskar with
Mr. Sanjay Kumar Jha, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 29-07-2019

Heard learned counsel for the petitioner and learned
counsel for the opposite parties.

2. The petitioner has moved the Court under Section 19
(4) of the Family Courts Act, 1984 against the judgment and order
dated 12.10.2017 passed by the Principal Judge, Family Court,
Saran at Chapra in Maintenance Case No. 133 of 2013 by which
he has been directed to pay Rs. 10,000/- per month maintenance
under Section 125 of the Code of Criminal Procedure, 1973
(hereinafter referred to as the 'Code').



3. The opposite party no. 1 is the wife of the petitioner and she had moved the Court by filing Maintenance Case No. 133 of 2013. After hearing the parties and conducting full trial, the Court had passed the order in favour of the opposite parties by directing the petitioner to pay Rs. 10,000/- per month as maintenance.

4. Learned counsel for the petitioner submitted that opposite party no. 1 has herself deserted the petitioner and, thus, cannot be awarded any maintenance in terms of Section 125 (4) of the Code. Learned counsel submitted that with regard to the allegation of having married another woman, the same has also not been believed by the Court as in the complaint case filed by the opposite party no. 1 against the petitioner, he has been acquitted. Learned counsel further submitted that he is a retired person getting Rs. 12,500/- as monthly pension and on the same amount he has to maintain his ailing and aged parents. Learned counsel submitted that in such background, the amount of Rs. 10,000/- per month maintenance awarded in favour of the opposite parties is unreasonable. It was further submitted that in the complaint case filed by the opposite party no. 1, under the order of the Court, he had taken the opposite party no. 1 to the matrimonial home but she



did not go and reside there and instead she went to the house of another person in the village.

5. Learned counsel for the opposite parties submitted that the petitioner has not made out any ground for indulgence by the Court. It was submitted that before the Court below evidence was adduced in which it has come that the petitioner is getting monthly pension and also gets return of Rs. 30,000/- per month on the investment he had made on receiving his post retiral benefits of about Rs. 20,00,000/-. Learned counsel submitted that the opposite party no. 1 has not deserted the petitioner by refusing to live with her as there are valid and *bona fide* reasons for not doing so, both because of the conduct of the petitioner as also the fact of him having married another woman. It was submitted that mere acquittal of the charge of second marriage does not mean that the petitioner has not married or living with another woman, for such things cannot be proved on record but are a reality on the ground. Learned counsel submitted that the petitioner in his deposition has admitted that he is not paying any maintenance also for the children and further he has also admitted that the daughters require education which may be expensive and further that he shall take care of their expenses, including those of marriage, but unfortunately till date he is not paying any money muchless in



terms of the order impugned. It was further submitted that the petitioner himself has admitted that he has another brother and that the father was looking after the Chimney which means that he is himself gainfully employed and it is expected that income from Chimney would be substantive. It was submitted that all the three persons, i.e., the wife and the two daughters of the petitioner, had moved the Court below seeking maintenance and Rs. 10,000/- awarded in their favour can in no way be said to be unreasonable.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application.

7. Whatever has been submitted on behalf of the petitioner about certain orders and events in collateral proceedings may not be of much relevance in the present proceeding. In a criminal case, standard of proof beyond reasonable doubt is of a high level. In the present case, on the basis of materials available before the Court, including deposition of the parties, it appears that the petitioner is financially quite solvent and payment of Rs. 10,000/- cannot be said to be either arbitrary or exorbitant. Further, nothing has been brought on record to show that there is no monthly income or returns from the investment made by the petitioner of a heavy amount received by him at the time of his



superannuation. Moreover, the petitioner himself admitted that he has a brother and that the father manages the Chimney which clearly indicates that even otherwise the family has sufficient income so as to afford paying monthly maintenance of Rs. 10,000/- to the opposite parties. The Court, thus, taking an overall and holistic view in the matter, does not find sufficient ground to warrant interference in the order impugned, either in law or on facts.

8. For reasons aforesaid, the application stands dismissed.

9. The Court below shall take all necessary steps for ensuring that the order is also implemented.

(Ahsanuddin Amanullah, J)

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