

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1180 of 2019

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

Rupesh Kumar Mishra Son of Shri Nawal Kishore Mishra Resident of Village - Chhawahi Takki, P.S.- Manjhagarh, Dist.- Gopalganj at Present C/o Anirudh Rai (Advocate), R/o Sadhu Chowk Sareya Ward No.5, P.S. and Dist.- Gopalganj.

... .. Petitioner/s

Versus

Choti Devi @ Shewta Devi Wife of Rupesh Kumar Mishra, D/o Gauri Shankar Pandey Resident of Village - Chawahi Takki, P.S.- Manjhagarh, Dist.- Gopalganj at Present resident of Sadhu Chowk Sareya ward No.3, P.S.- and Dist.- Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ranjeet Kumar Pandey
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 09-12-2019

The present petition has been filed against the judgment dated 17.06.2019 passed by the learned Principal Judge, Family Court, Gopalganj in Maintenance Case No. 163 of 2014, C.I.S. registration no. 160/ 2014, whereby and where under the maintenance case has been allowed on contest and the petitioner herein has been directed to pay a sum of Rs. 3500/- per month as maintenance allowance to the opposite party.

2. The brief facts of the case are that the marriage of the petitioner and the opposite party is stated to have been solemnized on 07.12.2008 and it is alleged in the complaint



petition that the father of the opposite party had given a sum of Rs. 3.30 lacs as *Stridhan* apart from jewelry, clothss furniture etc. It is further stated in the complaint petition that after marriage, the opposite party herein had come to her in-law's place and had stayed there for two months, where-after she had gone to Mumbai along with his father for giving examination and after examination was over, she came back to her in-law's place in the month of May 2009, however, behavior of the petitioner and his family members was not good and they used to demand various articles like Fridge, Washing Machine, Inverter, T.V. etc. and upon non-fulfillment of the said demand for dowry, she used to be beaten and the accused persons including the petitioner, used to stop giving food to her. It has been stated in the said complaint petition that thereafter, the family and friends had intervened and the matter had become normal for some time, however, again the petitioner and his family members started harassing the opposite party on account of non-fulfillment of all the demand for dowry and lastly on 10.09.2011, the opposite party is stated to have been beaten and thrown out of the matrimonial house, where-after the opposite party is staying with her father, nonetheless, her father is very poor and, therefore, the opposite party is living



in a state of pecuniary.

3. The complainant has also averred in her complaint petition that the petitioner herein, who is her husband, is having ample amount of land and is having a salary income of Rs.50,000/- per month, accordingly, a prayer was made in the complaint petition for grant of Rs. 10,000/- per month as maintenance amount to the complainant.

4. The petitioner herein had appeared before the Family Court in the aforesaid maintenance case and filed his show cause stating therein that neither he has tortured the complainant nor any demand for dowry has been made. It is also stated that the petitioner is an unemployed person and is unable to pay the amount demanded in the complaint petition.

5. It appears from the impugned judgment dated 17.06.2019 that the complainant had examined three witnesses in her support including herself, who have all supported the averments made in the complaint petition. It is also apparent from the judgment dated 17.06.2019 that the witness no. 1, whose evidence was led by the petitioner herein, though supported the case of the petitioner, but in his cross-examination has stated that his son i.e. the petitioner herein works privately and a house has been constructed in the



Gopalganj town.

6. The learned counsel for the petitioner has submitted that the petitioner does not have sufficient means so as to pay the amount of maintenance awarded by the learned court below, as demanded by the opposite party herein. It is further submitted that on the contrary, the opposite party herein is a working lady and is drawing a handsome salary. The learned counsel for the petitioner has also referred to Exhibit-2, filed by the opposite party herein in the aforesaid maintenance case, however, with objection. In this regard, this Court finds that the said Exhibit-2, said to be in the hand-writing of the opposite party herein, first of all does not have any evidentiary value and secondly the same has not been proved during the course of the maintenance proceedings. In that view of the matter, the said Exhibit-2, which is a twelve line statement, stated to have been signed by the opposite party, cannot form the basis of denial of maintenance allowance to her.

7. I have heard the learned counsel for the parties and gone through the materials on record and have also perused the impugned judgment dated 17.06.2019 from which it is apparent that the marriage in between the petitioner and the opposite party is admitted and the petitioner has ousted his



wife i.e. the opposite party herein from his house on account of which she is living in her parental house and she has got no independent resource of income to maintain herself, hence the learned court of Principal Judge, Family court has come to a finding that the petitioner herein is liable to maintain his wife by paying maintenance to her, thus has rightly awarded maintenance in favour of the opposite party herein. Thus I am of the view that there is neither any infirmity nor illegality nor any jurisdictional error in the impugned judgment dated 17.6.2019, hence the present petition stands dismissed.

8. 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 ***Bhuwan 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.”

9. 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.

10. Having regard to 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 and the learned Principal Judge, Family Court, Gopalganj, has awarded a meager amount of maintenance of Rs.3,500/- per month, vide the impugned judgment dated 17.06.2019, 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
CAV DATE	N/A
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