

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.473 of 2017

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

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Md. Saif Raza son of Md. Ishaque Ansari Resident of Village - Gangapur,
P.O. P.S. Kurtha, District - Arwal.

... .. Petitioner/s

Versus

Razwana Khatoon daughter of Md. Raghbir Hasan Resident of Village -
Ganapur, P.O. P.S. - Kurtha, District - Arwal.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Najmul Hoda, Adv.
Mr.Md. Fahimuddin, Adv.
For the opposite party : Mr. Nawal Kishor Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

7 07-01-2019 This revision application has been filed against the order dated 20.03.2017 passed by the Principal Judge, Family Court, Jehanabad in Maintenance Case No. 49/2015, by which, the petitioner has been directed to pay Rs. 5,000/- (Rs. Five Thousand) per month as maintenance since date of filing of the application i.e. 18.08.2015 and arrear of maintenance to opposite party.

2. Fact in short is that marriage of opposite party was solemnized with petitioner according to the Muslim rites and customs but later on she was ousted for demand of dowry. Thereafter, opposite party has filed a case under Section 498A of the Indian Penal Code being Kurtha P.S. Case No. 94/15 and also filed the maintenance case before the Family Court.



3. Case of the petitioner is that he was forcefully got married with opposite party in Kurtha Police Station against his will and all the allegations of demand of dowry and torture is false and concocted and there is no valid marriage between the petitioner and opposite party.

4. On the basis of the aforesaid claim, opposite party demanded Rs. 5,000/- per month as maintenance as according to her, the petitioner has been working as Supervisor in Indira Awas Yojna and he is getting a monthly salary of Rs. 15,000/-. Apart from that he also has 10 kathas of agricultural land, from which, also he is earning income.

5. The learned Family Court after considering the evidence adduced on behalf of the parties, vide order dated 20.03.2017 has found that he opposite party is the wife of the petitioner and also considering the income of the petitioner, has allowed the maintenance application filed by the opposite party and directed the petitioner to pay Rs. 5,000/- per month as maintenance from the date of institution of case i.e. from 18.08.2015.

6. Being aggrieved, the petitioner has preferred the instant revision application.

7. It appears that during pendency of the application, this court vide order dated 13.02.2018 noticed to opposite party and



also directed the petitioner to deposit Rs. 30,000/- before the concerned learned Family Court and also directed the petitioner to pay Rs. 25,00/- per month to opposite party from the month of February 2018.

8. The petitioner has assailed the order of learned Family Court on the ground that there is no valid marriage between the petitioner and opposite party and, therefore, she is not entitled for any maintenance and the petitioner has also filed a case for annulment of marriage, which is Matrimonial Suit No. 100/15 pending before the learned Family Court. Further, submission is that the petitioner is only getting Rs. 12,000/- as salary for discharge of his duties as Supervisor in Indira Awas Yojna and not Rs. 15,000/- as has been stated by the opposite party, and as such, the amount of maintenance is excessive. Further argument of learned counsel for the petitioner is that even if the maintenance order is affirmed, the same should be allowed from the date of order and not from the date of institution of maintenance case i.e. from 18.08.2015.

9. Learned counsel appearing on behalf of opposite party on the other hand, has submitted that the learned Family Court has rightly considered the decision of Hon'ble Supreme Court in the case of S. Sethurathinam Pillai vs. Barbara alias Dolly



Sethuratinam, (1971) 3 SCC 923, in which, it was observed that maintenance under Section 488 Cr.P.C. cannot be denied where there was some evidence on which conclusion for grant of maintenance could be reached. It was held that order passed under Section 488 is a summary order which does not finally determine the right and obligation of the parties; the decision of the criminal court that there was a valid marriage between the parties will not operate as decisive in any civil proceeding between the parties.

10. On the basis of the above contention, learned counsel for opposite party has argued that the learned Trial Court has found that the opposite party no. 1 is the wife of petitioner and further found that income of the petitioner as Rs. 15,000/- per month apart from the income from landed property and also found that opposite party is not able to maintain herself, as such, the Family Court has rightly granted maintenance of Rs. 5,000/- per month from the date of institution of maintenance case i.e. from 18.08.2015 and, therefore, there is no illegality in the order passed by the learned Family Court.

11. Having heard both sides, in the present case the main ground taken by the petitioner for assailing the impugned order is that there was no valid marriage between the petitioner and



opposite party. However, the evidence available on record shows that there was a marriage between the petitioner and opposite party. No doubt, the petitioner claimed that he was forcibly compelled to marry opposite party in the Kurtha police station, whereas, the claim of opposite party is that she was married with the petitioner in community hall and many persons were the witness of the marriage. No doubt, petitioner has challenged his marriage with the opposite party before the Family Court by filing a case for annulment of marriage but the same is still pending and on the other hand, the evidence available on record *prima facie* shows that opposite party is the wife of petitioner.

12. It further appears that learned Family Court has found the income of petitioner Rs. 15,000/- per month besides income from the landed property but there is submission of learned counsel for the petitioner that he is only getting Rs. 12,000/- per month as salary and he also has to look after his father. However, the order clearly shows that father of petitioner has been examined as PW-5, and his evidence shows that he himself is a retired Headmaster and his son (petitioner) is living separate from him.

13. Considering the aforesaid facts and circumstances even



according to the petitioner, he is getting Rs. 12,000 per month as salary and as the evidence available on record shows that opposite party is the wife of petitioner, in such view of the matter, the opposite party is at least entitled for 1/3rd of the amount of salary of the petitioner, which comes to Rs. 4,000/- per month.

14. In such view of the matter, the impugned order dated 20.03.2017 passed by the Principal Judge, Family Court, Jehanabad in Maintenance Case No. 49/2015 is affirmed. However, the maintenance amount is modified from Rs. 5,000/- to Rs. 4,000/- and in view of the facts and circumstances of the case, as earlier there was interim direction to the petitioner by a coordinate Bench of this Court to pay Rs. 2500 to opposite party and also to deposit Rs. 30,000/- as lump sump amount, as such, petitioner is directed to pay Rs. 25,00/- from the date of filing of the maintenance application to the date of this order. So far maintenance of Rs. 4,000/- is concerned, the petitioner shall pay the same to opposite party on the 15th day of each month from the date of this order. Further the amount of Rs. 30,000/- deposited by the petitioner is directed to be released in favour of opposite party.

15. Accordingly, with the above modification, this application



is dismissed.

16. Petitioner would be at liberty to move before the learned Family Court, if any order is passed in Matrimonial Suit No. 100/15.

(Vinod Kumar Sinha, J)

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