

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.1235 of 2017

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

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Ramnath Mishra S/o Late Ram Lakhan Mishra, R/o Village- Chatia, Malahi,
District- East Champaran.

... .. Petitioner

Versus

Shail Devi W/o Ramnath Mishra and D/o Late Jagarnath Mishra, R/o Village-
Chatia, P.S.- Malahi, District- East Champaran. At present C/o Prabhakar
Singh, Village- Raghunathpur, P.S.- Turkaulia, District- East Champaran.

... .. Respondent

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Appearance :

For the Petitioner/s : Mr.Umesh Tiwari, Advocate
For the Respondent/s : none.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

5 08-01-2019 This revision application has been preferred against

the order dated 11.10.2017 passed by Principal Judge, Family

Court, East Champaran at Motihari in Maintenance Case No.

232 of 2015.

Case, in short, is that opposite party has filed a

maintenance case before the Family Court, East Champaran at

Motihari stating that she is legally wedded wife of the petitioner

and there are three female children from the wedlock and all the

daughter are married and after birth of three daughters she

became a prey of ill treatment of the petitioner and she was

tortured in her sasural and she is living in her Naihar as she has

no source of income she has filed maintenance case before the

Family Court stating that petitioner is getting Rs.25,000/- per



month as pension and he has 10 bighas of land and she has prayed for maintenance of Rs.10,000/- per month from the petitioner. Case of petitioner is that opposite party is his legally wedded wife having three children and he is suffering from several diseases and his leg has been fractured and he has also admitted that he is getting Rs.24,000/- per month as pension and purchased some land from his personal income and that has been gifted to his nephew Shambhu Mishra which caused annoyance to the daughters of the petitioner and they got the maintenance case filed by opposite party, his wife. Further case of petitioner is that he is still ready to keep his wife with care and dignity.

It appears that four witnesses have been examined on behalf of opposite party, who is applicant in the maintenance case, and one witness has been examined on behalf of petitioner-husband and learned Family Court after perusal of the materials on record has found the opposite party as wife of the petitioner and he is getting Rs.25,000/- per month as pension and further found that opposite party-wife has no source of income for maintaining herself and considering the same the Family Court has allowed the maintenance case and directed the petitioner to pay Rs.10,000/- per month as maintenance.



Being aggrieved by the aforesaid order, the present revision application has been preferred by the petitioner-husband. It further appears that in this case notice was issued to opposite party and she refused to receive the notice and as such notice has been treated as valid and in spite of valid service none has appeared on behalf of opposite party.

The main contention of learned counsel for the petitioner is that he is still ready to keep his wife but she is not ready to live with him and as per Section 125(4) of Cr.P.C. she has deserted the petitioner-husband and as such she is not entitled to maintenance but the Family Court has not considered this aspect of the matter while allowing the maintenance case of opposite party.

Having heard learned counsel for the petitioner and on perusal of record it appears that this is admitted fact that opposite party is legally wedded wife of the petitioner and this is also admitted fact that petitioner is a retired teacher having pension of Rs.25,000/- per month and it further appears from perusal of the record that wife is living in her Maik and she has no source of income. In such a situation, question to be answered is as to whether the opposite party has deserted her husband-petitioner and as to whether she is entitled to



maintenance or not. It appears from perusal of the order of Family Court that petitioner has gifted some land to his nephew and being annoyed to that she is insisted to live in her Maiké and admittedly she has no source of income.

In such view of the matter, it appears that maintenance is required to opposite party and as such the Family Court has allowed Rs.10,000/- per month as maintenance to her as the petitioner is admittedly getting Rs.25,000/- per month as pension and it is also well settled that wife is entitled to live as per status of her husband and she is at least entitled to 1/3rd of income of her husband.

Considering the above facts and circumstances, I find no merit in this revision application filed by the petitioner. However, considering the income of the petitioner, maintenance amount is reduced to Rs.8000/- from Rs.10,000/- per month which shall be payable to opposite party by 15th of every month.

With the above observation and direction, this application is disposed of.

(Vinod Kumar Sinha, J)

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