

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.975 of 2017

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

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Deepak Kumar S/o Om Prakash Sah, R/o Gopal Road P.O.P.S.- Sultanganj,
District- Bhagalpur.

... .. Petitioner/s

Versus

1. Lovely Kumar W/o Deepak Kumar, D/o Awadhesh Kumar, R/o Gayatri Nagar Purabsarai, Gali No.1, P.S.- Kotwali, District- Munger.
2. Choti Kumar Minor, D/o Deepak Kumar through her guardian Lovely Kumari, R/o Gayatri Nagar Purabsarai, Gali No.1, P.O.- Purabsarai, P.S.- Kotwali, District- Munger.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Syed Mohammad Shabbir Alam
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 09-01-2020

1. The present petition has been filed for quashing the order dated 27.03.2017 passed by the learned Principal Judge, Family Court, Munger in connection with Maintenance case no. 18 of 2016, whereby and whereunder the learned court has fixed a sum of Rs. 3,000/- per month to be paid to the opposite party no. 1 (wife of the petitioner) and a sum of Rs. 1000/- per month to be paid to the opposite party no. 2 (minor daughter of the petitioner) by way of interim maintenance.

2. The brief facts of the case are that the opposite party no. 1 is the legally wedded wife of the petitioner herein and one daughter has been born out of the said wedlock,



however on account of non-fulfilment of the demand for dowry, the petitioner and his family members used to torture the opposite party no. 1 resulting in her being forced to take shelter at her parental house along with her minor daughter. The petitioner is stated to have filed a petition under Section 125 Cr.P.C. for grant of interim maintenance leading to registration of a case bearing Maintenance case no. 18 of 2016 before the learned court of Principal Judge, Family Court, Munger. In the said petition, it has been alleged that on account of torture by the petitioner herein, the opposite party no. 1 and her minor daughter have been forced to take shelter in her parental home and since she has got no source of income, it is incumbent upon the petitioner to maintain her, inasmuch as he is in service in Central Information Commission, New Delhi as an Assistant having a monthly salary of Rs. 50,000/- besides having a share in the income from the readymade shop at Sultanganj, Bhagalpur, amounting to a sum of Rs. 20,000/-. In such view of the matter, the opposite party no.1 had prayed for grant of interim maintenance @ 10,000/- per month for herself as also Rs. 5,000/- per month for her daughter, apart from litigation cost of Rs. 2,000/- per month.

3. The learned counsel for the petitioner has



submitted that the opposite party no. 1 has voluntarily withdrawn from the company of her husband and is, on her own will, not staying with the petitioner, hence is not entitled to grant of any amount of maintenance. It is further submitted by the learned counsel for the petitioner that the opposite party no. 1 is engaging in adultery, hence is not entitled to any relief, whatsoever. Lastly, it is submitted that the opposite party no. 1 is employed in a beauty parlour and is earning sufficient amount for herself and her daughter apart from the father of the opposite party no. 1 being employed in Railways and getting handsome salary. Thus, it is submitted that there is no pecuniary constraints, as far as the opposite parties are concerned and the petition under Section 125 Cr.P.C. has been filed only to harass the petitioner herein. At this juncture, it is also submitted that the petitioner is getting a gross salary of Rs. 17,500/- only.

4. I have heard the learned counsel for the parties and perused the materials on record as also the impugned order dated 27.03.2017, from which I find that the marriage in between the petitioner and the opposite party no. 1 stands admitted as also a child has been born out of the said wedlock. It is apparent from the records that the opposite parties have been ousted from the matrimonial home and that is why the opposite



party no. 1 along with her minor daughter is living at her parental house and has got no independent source of income to maintain herself. Hence, this Court is of the view that the learned Principal Judge, Family Court, Munger has rightly come to a conclusion that the petitioner herein is liable to pay maintenance to his wife and daughter, thus has justly awarded interim maintenance to the opposite parties herein.

5. 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 maladroitley 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."

6. 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.

7. 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 no. 1 and his daughter i.e. the opposite party no. 2 and the learned Principal Judge, Family Court, Munger, has awarded a meager amount of maintenance of Rs.3,000/- per month to the opposite party no. 1 and a sum of Rs. 1000/- per month to the opposite party no. 2, vide the impugned judgment dated 27.03.2017, 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, there is no merit in the present petition.

8. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I am of the view that there is neither any infirmity nor illegality nor any jurisdictional error in the impugned judgment dated 27.03.2017, hence the present petition stands dismissed, being devoid of any merit.

(Mohit Kumar Shah, J)

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