

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1114 of 2018

In
Miscellaneous Appeal No.1086 of 2017

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

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Smt. Veena Devi, wife of Shri Shambhu Choudhary, resident of village, Arania, P.S. Jandaha, District, Vaishali at present residing at D/o Shri Ramshankar Choudhary, village- Chakhardi, P.S. Mahanar, District, Vaishali

... .. Petitioner/s

Versus

1. The State of Bihar through District Magistrate, Vaishali, Hajipur
2. Shambhu Choudhary, Son of Sri Sone Lal Choudhary, resident of village- Arania, P.S. Jandaha, District, Vaishali

...Opp. Parties / Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Ranjan, Advocate
For the Respondent/s : Mr. Kaushal Kumar Jha, Advocate
Mr. Sanjay Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 01-06-2021

Heard learned counsel for the parties.

This criminal revision petition has been filed for setting aside the order dated 10.8.2017 passed by learned Principal Judge, Family Court, Vaishali at Hajipur dismissing the petition of petitioner filed under Section 125 of Cr.P.C. seeking maintenance from opposite party no.2.

Briefly stated the facts of the case is that petitioner is wife of opposite party no.2 who filed a petition on 27.10.2014 under Section 125 Cr.p.c. seeking maintenance to herself and



their four minor children giving rise to maintenance case No.217 of 2014 pending in the court of Principal Judge, Family Court, Vaishali at Hajipur.

It was stated in the petition that she has no source of income and is unable to maintain herself and her four minor children and husband – opposite party no.2 has sufficient means and he is obliged and duty bound to maintain petitioner and their four minor children but he is neglecting and refusing to maintain petitioner as well as their minor children, who live with their mother.

On notice, opposite party no.2 – husband appeared and effort for reconciliation failed and as per order dated 29.9.2016, the case was fixed for recording evidence and when petitioner appeared, the court found that petitioner is dumb, therefore, her evidence is not possible and fixed the date on 21.6.2017 for evidence of other witnesses. However, by order dated 10.8.2017, her maintenance case was compelled to be withdrawn without consent of petitioner. It is further submitted that petitioner is not dumb but suffering from stammering and hearing problem due to continuous torture and harassment. It is further submitted that petitioner had instituted a criminal case under Sections 498A and 494 of IPC against her husband /



opposite party no.2 and after investigation, police found the allegations to be true and submitted charge-sheet against opposite party no.2.

It is further submitted that marriage between petitioner and opposite party no.2 is admitted and four children are born from said wedlock and, as such, opposite party no.2 is bound to maintain them and petitioner is entitled for maintenance.

Opposite party no.2 has appeared and filed his statement and has stated that he is willing to keep his wife/petitioner with dignity and honour, however, from the records, it appears that petitioner had refused to live with opposite party no.2, as he used to torture and harass her and has also solemnized second marriage, as such, petitioner has sufficient cause not to live with opposite party no.2 and her right of maintenance cannot be denied on ground of procedural infirmity. Only because petitioner is dumb, her right of maintenance cannot be denied by court of law as there are sufficient provisions made to communicate with such disabled persons.

Section 119 of Evidence Act reads as follows:-

“119. Witness unable to communicate verbally.-

A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by



writing or by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence.

Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an interpreter or a special educator in recording the statement, and such statement shall be videographed.”

Even otherwise, family court is not bound by any procedural law and can lay down its own procedure to arrive at the truth of the facts.

For the reasons, as stated above, the order dated 10.8.2017 passed by learned Principal Judge, Family Court, Vaishali at Hajipur is not sustainable either in law or on facts and is, accordingly, set aside. The matter is remanded to the concerned court to decide the maintenance case filed by petitioner in accordance with law preferably within six months from the date of receipt/production of a copy of order passed by this Court.

This criminal revision petition is, accordingly, allowed.

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.06.2021
Transmission Date	NA

