

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1299 of 2018

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

Md. Iliyas, Son of Md. Usman, resident of village- Magurjan, P.S. Bahara Kothi, District- Purnea.

... .. Petitioner

Versus

Amina Khatoon, wife of Md. Iliyas, Daughter of Late Bijal Mohamed, resident of village- Magurjan, P.S. Barhara Kothi, District- Purnea.

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Ajit Kumar Singh, Advocate
For the Respondent/s : Mr.Akhileshwar Dayal,APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 28-11-2022 Heard learned counsel for the petitioner at length.

Petitioner, in this case, is aggrieved by and dissatisfied with the order dated 23.08.2018 passed in Maintenance Case No. 330 of 2012 by the learned Principal Judge, Family Court, Purnea.

By the impugned order the learned Family Court has allowed a maintenance amount of Rs. 3,000/- payable to the applicant- wife by her husband who is petitioner before this Court.

Learned counsel for the petitioner has raised an argument saying that at the time of the alleged Nikah, the age of the applicant was only ten years, therefore, the marriage cannot be said to be a valid marriage and the petitioner would not be liable to maintain the applicant- wife. Learned counsel has



further submitted that on the *Nikahnama*, the name of the witnesses are not duly mentioned.

The another point raised on behalf of the petitioner is on the quantum of income of the petitioner. It is stated that the petitioner was working as a driver at Delhi and at the relevant time, his monthly income was Rs. 6,000/- per month. Under these circumstances award of maintenance of Rs. 3,000/- is excessive.

This Court has gone through the materials available on the record. The copy of the deposition of the witnesses have also been produced before this Court. On perusal of the deposition of the applicant, it appears that according to her the *Nikah* took place on 26.03.1990. It is alleged that after her *Nikah* when she went to her *sasural*, she was being tortured by her husband and in-laws. After sometime, her father brought her to his place and thereafter the husband- petitioner left for Punjab. She has made certain allegations against her in-laws which are not necessary to be taken note of in the present proceeding.

The applicant has deposed that for last about three and half years, her husband was engaged in the business of running of vehicles in Delhi but recently he had sold the vehicles and



had indulged in the business of sale and purchase of food grains in Purnea. He had purchased two Bighas of land and from the business he earns around Rs. 40,000/- per month. The applicant alleged that her husband was not giving her any maintenance and she is being neglected. She was cross-examined by the opposite party and in her cross-examination also she reiterated that her *Nikah* was performed by *Maulvi* and a *Nikahnama* was prepared. She asserted that her *Nikahnama* has been placed on record of this case. She was suggested by the opposite party that she had left her husband's place after quarrel and she does not like. The applicant denied this suggestion. She denied another suggestion of the opposite party that her claim is wrong. Further in response to the question put to her that why did she not want to stay with her husband, she categorically answered that now she cannot live with the opposite party because he has got five children from his second marriage.

The case of the applicant has been supported by three other witnesses and the applicant witness no. 4 is the *Maulvi* who has stated that he was the only *Maulvi* in the village at the relevant time and he had performed the *Nikah* between the applicant and the opposite party. Although the opposite party cross-examined the *Maulvi* (AW-4) but no contradiction could



be taken out from his deposition.

This Court finds from the deposition placed before this Court that in the court below no suggestion was thrown to the applicant that there was no valid marriage between the petitioner and the opposite party. There was no suggestion that the applicant was only 10 years old. Further there was no suggestion that the applicant is having sufficient income to maintain herself. On the other hand, there is an admission of the O.P. witnesses that he was earning Rs. 6,000/- per month as a Driver. The applicant has categorically stated that her husband is earning Rs. 40,000/- per month from his business in dealing with food grains, even this claim of the applicant has not been contested by the O.P. in course of cross-examination because no question at all was put to her to controvert her statements.

In the entirety of the facts and circumstances of the case, both the pleas taken on behalf of the petitioner as mentioned above would fail. In the revisional jurisdiction, this Court cannot allow learned counsel for the petitioner to improve upon the evidences and make out a case on his own wisdom. This Court is sitting in its revisional jurisdiction and on finding that there is no perversity, illegality or infirmity with the impugned judgment, this Court would refuse to interfere with



the impugned judgment.

This revision application has no merit, it is dismissed accordingly.

Let the learned Principal Judge, Family Court, Purnea proceed to enforce the impugned order expeditiously.

Before this Court parts with this order, the judicial conscience of this Court is of the view that this Maintenance Case being that of the year 2012 and the applicant- wife has remained waiting to get the fruit of the judgment for more than four years and in total for 10 years since the date of filing of the application, in case, it is found that the petitioner has not made payment of the maintenance amount to his wife for all these years, he would also be liable to pay a cost of Rs. 25,000/- which will be realized from him together with the outstanding amount as early as possible and the same will be made available to the applicant- wife.

The application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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