

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.108 of 2019**

Arising Out of PS. Case No.- Year-0 Thana- District-

Shailendra Singh @ Shailendra Kumar Singh @ Shailendra Kumar Son of
Late Prahlad Singh @ Prahlad Prasad Singh R/o village- Kathail , P.S-
Amarpur, District- Banka

... .. Petitioner

Versus

1. The State of Bihar
2. Bandana Devi Wife of Shailendra Kumar Singh @ Shailendra Kumar @
Shailendra Singh, D/o Chunchun Prasad Singh R/o village- Saharana, P.S
Barahat, District- Banka

... .. Opposite Parties.

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Jha, Advocate
For the Respondent/s : Mr.Akhileshwar Dayal, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

5 26-09-2022 Heard learned counsel for the petitioner and

learned A.P.P. for the State.

Petitioner, in the present case, has challenged the
judgment dated 05.09.2018 passed by learned Principal
Judge, Family Court, Banka in Misc. (Maintenance) Case
No. 98/2013, Tr. No. 30/2018 (P.J.), by which the learned
court below has fixed a monthly allowance of Rs. 2000/- for
the applicant-wife with effect from the date of the order.

It appears that the maintenance case was filed in
the year 2013 seeking a sum of Rs. 10,000/- per month as
maintenance.

The learned Principal Judge has, after going



through the evidences of the respective parties, recorded a finding that the applicant-wife was married to this petitioner in the year 2005. The husband was demanding Rs. 1,00,000/- (Rupees One Lakh) in cash and a motorcycle. Due to non-fulfillment of the demand he tortured his wife and kicked her out of his house, whereafter she lodged the case in Mahila Police Station against her husband. At the time of seeking bail, the petitioner agreed to keep his wife, took her to his house but again assaulted her and kicked her out. She was thereafter living in her parental house having no source of income.

As regards the income of the petitioner, it is stated that he runs a Dharamshala and has ten (10) bighas of cultivable land.

Contesting the impugned judgment, learned counsel for the petitioner has a raised solitary ground saying that the petitioner wants to keep his wife but it is his wife who does not want to live with him. According to him, under these circumstances the learned Principal Judge, Family Court has erred in awarding maintenance.

This Court has perused the impugned judgment.



The facts which have surfaced in course of evidence of the parties go to suggest that the wife is complaining of torture by this petitioner. She has lodged a criminal case and it is alleged that she has been thrown out of her matrimonial house. Under these circumstances, a bald submission on behalf of the petitioner that he wants to keep his wife does not impress this Court.

This Court further finds from the impugned order that the learned court below has awarded a meagre sum of Rs. 2000/- per month as maintenance to the applicant-wife. Learned counsel for the petitioner was called upon to say as to whether the petitioner is paying this amount to his wife. His answer is that he is not aware of the same.

This Court further called upon learned counsel for the petitioner to satisfy as to why in terms of the judgment of the Hon'ble Supreme Court in the case of **Rajnesh v. Neha & Ors.** reported in **(2021) 2 SCC 324**, the maintenance amount be not ordered from the date of institution of the maintenance case.

Learned counsel for the petitioner is unable to contest this aspect of the matter.



In the case of **Rajnish** (supra) in paragraph '80' of the judgment the Hon'ble Supreme Court has referred the case-laws in which it has been held that while fixing the maintenance the court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of 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 if he is able-bodied and has educational qualifications.

The Hon'ble Apex Court has while balancing the relevant factors which are to be taken into consideration for determination of maintenance in matrimonial dispute has taken a view that the maintenance amount awarded must be reasonable and realistic and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury.

As regards the date of applicability of the maintenance, the Hon'ble Supreme Court has considered the previous case laws on the subject and has finally



concluded that taking the divergent views of the different High Courts on the date from which the maintenance should be awarded, even though a judicial discretion is conferred upon the court to grant maintenance either from the date of application or from the date of the order in sub-section (2) of Section 125 Cr.P.C., it would be appropriate to grant maintenance from the date of the application in all cases including section 125 Cr.P.C. This, according to the Hon'ble Apex Court, would be the practical working of the provisions relating to maintenance particularly where there is significant delay in disposal of the applications for interim maintenance for years on end. It has been found to be in the interest of justice and fair play that the maintenance is awarded from the date of the application.

In the aforesaid view of the matter, this Court is of the considered opinion that no interference is required with the quantum of maintenance but the maintenance amount shall be payable from the date of institution of the application under Section 125 Cr.P.C. Learned counsel for the petitioner has not contested this issue in view of the Judgment of the Hon'ble Supreme Court in the case of



Rajnish (supra).

This Revision Application is, thus, disposed of with a direction to the learned Principal Judge, Family Court, Banka to realize the entire arrears and current maintenance from the petitioner as early as possible and expeditiously.

This is further ordered that in case the petitioner has not paid any amount to his wife towards maintenance for all these period, he will also be liable to pay a cost of Rs. 25,000/- which will be payable to the applicant-wife. This Court is imposing the cost keeping in view that the petitioner has engaged his wife in litigation for getting her maintenance of a meagre sum of Rs. 2000/- for nine years by now.

This Application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

