

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.279 of 2018**

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

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Bibi Sabina Khatoon @ Sabina Khatoon wife of Md. Irshad, daughter of Md. Jamruddin resident of village Sagunia, Police Station - Kumdhi Kadwa, District - Katihar at present resident of Raipur Matiya, Police Station - Muffasil Ranipatra, District - Purnea.

... .. Petitioner

Versus

Md. Irshad son of Sheikh Salim resident of village - Sagunia, Post - Sagrath, Police Station - Kumdhi Kadwa, District - Katihar at present C/o Dr. Sharad Kumar Sah, Clinic Line Bazar, Post - Line Bazar, Police Station - K. Hat, District - Purnea.

... .. Respondent

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Appearance :

For the Petitioner/s : Mr.Rajendra Prasad Shah, Advocate
For the Respondent/s : Mr.Praveen Kumar Agrawal, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date : 05-07-2022

Heard learned counsel for the petitioner and learned counsel for the opposite party.

2. Petitioner, in the present case, is aggrieved by and dissatisfied with the order dated 08.12.2017 passed in Maintenance Case No. 296/2013 passed by learned Principal Judge, Family Court, Purnea whereby and whereunder the learned Family Court has been pleased to dismiss the maintenance case.

3. Learned counsel for the petitioner submits that the impugned order suffers from illegality and infirmity inasmuch



as the learned Principal Judge, Family Court has refused to allow any amount of maintenance to the applicant – wife on the solitary ground that she has not come herself to depose in course of evidence and therefore the deposition of the witnesses in her support would not carry any weight.

4. Learned counsel submits that on a bare perusal of the application under Section 125 Cr.P.C. (Annexure ‘1’), it would appear that the said application was duly supported by an affidavit.

5. In response thereto the husband – opposite party admitted in his reply that he had performed a second marriage with a widow but his allegation was that the applicant – wife had refused to serve the old aged parents of the husband and had been living in her *Naihar*. This allegation of the husband – opposite party was made to oppose the case of the applicant – wife that she had been in fact ousted from the matrimonial house after her husband brought a *Sautan* in the matrimonial home and she was being tortured by her husband and the *Sautan*.

6. Learned counsel further submits that admittedly the husband – opposite party is working as a compounder and is employed in the clinic of a private physician doctor. It is his



submission that the applicant has got two minor children. It is lastly submitted that in support of the case of the applicant three witnesses had been examined and because of unawareness and lack of legal advise she was not examined in course of evidence. It is, however, his submission that a proceeding under Section 125 Cr.P.C. is a summary proceeding and on the face of the statement of the applicant duly supported by her affidavit and the deposition of the three witnesses, the case of the petitioner could not have been rejected on the solitary ground that she had not come herself to depose.

7. Learned counsel further submits that a provision for maintenance under Section 125 Cr.P.C. has been brought in the statute book to take care of the neglected women having no income to maintain herself. It is based on the principle of equity as well. Those women facing hardship in her life are provided some succor in a summary proceeding. According to him, perhaps, the learned Principal Judge, Family Court, Purnea has failed to take note of the object and purpose behind providing such a provision under the Cr.P.C.

8. This application has been contested by learned counsel for the opposite party no. 2. It is submitted that the learned Family Court has taken note of the stand of the opposite



party as disclosed in his show cause. It is stated that the wife had taken divorce and she is residing separately and she had been earning her livelihood by doing some daily wages work.

Consideration

9. Having heard learned counsel for the petitioner – opposite party and on perusal of the records, this Court finds that the application of the applicant – wife has been rejected mainly on the ground that the applicant – wife had not come to depose in course of evidence. The learned court has taken note of the stand of the opposite party as disclosed in his show cause but could not appreciate that the applicant had also filed her application duly supported by an affidavit. The court could not appreciate that a proceeding under Section 125 Cr.P.C. is a summary proceeding and in such proceeding the case is not to be conducted by way of a long drawn trial. In appropriate cases evidence may be led by way of affidavit because under the Code of Civil Procedure one of the modes of leading evidence is by way of affidavit. In this case, the applicant – wife had in fact adduced witnesses in support of her application and there was no reason for the learned Principal Judge, Family Court to refuse to look into the deposition of those witnesses. The show cause of the husband – opposite party itself admits in paragraph



‘7’ that he wanted his wife to stay in his house to serve his parents. It further says that the husband had performed a second marriage with a widow and at this stage there is no averment that this second marriage was performed after taking divorce from the applicant – wife. The Further conduct of the husband – opposite party may be found on perusal of paragraph ‘10’ of his show cause in which he states that his house is situated in the village but he stays in connection with his job in the clinic of a doctor and goes to his village once in a week and this was not acceptable to the applicant – wife, therefore, she proposed a divorce to the husband – opposite party and the opposite party gave divorce to the applicant – wife on 13.04.2010.

10. A conjoint reading of the various paragraphs of the show cause of the husband – opposite party would make it crystal clear that the husband – opposite party had performed a second marriage, he was living at his place of work and he wanted his applicant – wife to stay in his village to serve his parents and those were the cause of matrimonial dispute. This court is, therefore, of the considered opinion that the Principal Judge, Family Court, Purnea should have been sensitive enough to protect the interest of the applicant – wife taking into consideration the object and purpose behind providing a



provision like section 125 Cr.P.C. in the statute book as well as the principle of equity. The learned court below has, in the opinion of this court, failed to appreciate this aspect of the matter and chose it to dismiss the complaint. For these reasons, this Court sets-aside the impugned judgment.

11. In the case of **Rajnish Versus Neha and Another** reported in **(2021)2SCC 324** their lordships of the Hon'ble Supreme Court have stated once again that Section 125 Cr.P.C. is a measure of social justice and especially enacted to protect women and children, and falls within the constitutional sweep of Article 15(3), reinforced by Article 39. of the Constitution. (para 37). paragraph 38 of the said judgment of the Hon'ble Supreme Court is recorded as under:-

“38. Proceedings under Section 125 CrPC are summary in nature. In *Bhuwan Mohan Singh v. Meena*¹⁹ this Court held that Section 125 CrPC was conceived to ameliorate the agony, anguish, financial suffering of a woman who had left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children. Since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband was required to earn money even by physical labour, if he is able-bodied, and could not avoid his obligation, except on any legally permissible ground mentioned in the statute.”

19. (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200]



12. This Court finds that the application in this case was filed in the year 2013. Nine years have gone past and the applicant – wife is not getting a single farthing to support herself. This Court is, therefore, of the considered opinion that relegating the applicant – wife to the court below once again would not serve the interest of justice. This Court is a constitutional Court and their lordships have held in the case of **Chaturbhuj V. Sita Bai** reported in **(2008) 2 SCC 316** that Section 125 Cr.P.C. falls within the constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution. The judicial conscience of this court keeping in mind the law on the subject and the equity which also favours the applicant – wife suggests that the application as contained in Annexure ‘1’ preferred under Section 125 Cr.P.C. is to be allowed and a reasonable amount of maintenance be fixed for the applicant – wife.

13. Considering that the husband–opposite party is involved in skilled work and the learned counsel has in fact indicated that he is rendering services as compounder and has employed in the clinic of a doctor, now he is a quite experienced compounder and about nine years back he on his own declared his income as Rs. 5000/- per month. This Court would at this



stage assess his income as not less than Rs. 20,000/- per month. The opposite party has deprived his wife from any assistance/help in her living for about a decade. This Court, therefore, directs the husband – opposite party to pay a sum of Rs. 5000/- per month to the applicant – wife with effect from 16.11.2013 that is the date on which the application seeking maintenance was filed in the learned court below. He will pay the arrears of maintenance in the equal monthly installments of Rs. 3000/- each month till such arrears are fully paid. The arrear installment and the current maintenance amount together being Rs. 8000/- per months shall be paid to the applicant – wife every months within first ten days of the month. Such payment shall starts forthwith and the first installment must be paid in the month of July, 2022 itself.

14. This application stands allowed as indicated above.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	06.07.2022
Transmission Date	06.07.2022

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'.

