

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.391 of 2020

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

=====

BAM BAHADUR SINGH @ BAMABAHADUR SINGH, Son of Late Jagadambi Singh, Resident of Village- Kaluchak (Kalindi Nagar), P.O.- Bhim Das Tola Tintanga, P.S.- Gopalpur, District- Bhagalpur.

... .. Petitioner

Versus

Renu Devi, Wife of Bam Bahadur Singh @ Bamabahadur Singh, Daughter of Bindeshwari Singh Resident of Village- Korchakka, P.O.- Bharatkhand Deodhi, P.S.- Pasraha, District- Khagaria.

... .. Respondent

=====

Appearance :

For the Petitioner/s : Mr.Mrityunjay Kumar, Advocate
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 23-06-2022 Heard learned counsel for the petitioner and perused the records.

Petitioner is aggrieved by the judgment dated 07.03.2020 passed by learned Principal Judge, Family Court, Khagaria in Maintenance Case No. 12M of 2011.

Learned counsel for the petitioner has assailed the judgment saying that this is an ex-parte judgment and in the facts of the present case the petitioner be given an opportunity to appear and defend himself. Attention of this Court has been drawn towards the statements made in paragraph '8' and '10 of the application wherein the petitioner has contended that he has been suffering from several diseases and physically very weak



as a result whereof he may not do any work, therefore, he has no income from any source. He has further stated that there is no land in the name of the petitioner. He has further contended that the opposite party spends her life in adultery and she earns Rs. 500 per day from sewing machine and cooking in a school at Khagaria.

This Court has perused the impugned judgment passed by learned Principal Judge, Family Court, Khagaria. A bare perusal shows that the wife of the petitioner filed an application seeking maintenance on several grounds including that the petitioner had treated her with cruelty and thrown her out of the matrimonial house.

The application seeking maintenance was filed on 02.05.2011 which was admitted on 03.06.2011. After initial notice when the petitioner did not appear then gazette publication was done, still the petitioner did not appear so the case was fixed for ex-parte hearing on 21.12.2011. Thereafter, the petitioner appeared in the court with his lawyer on 31.01.2013 and filed an application for recall of the order fixing the case for ex-parte hearing. On 21.02.2013 the court accepted the application of the petitioner subject to payment of a cost of Rs. 1500/-. The petitioner did not deposit the cost imposed by



the court and as a result thereof the show cause filed on his behalf was not accepted.

In course of the hearing of the case, the learned Principal Judge, Family Court, Khagaria has taken into consideration the evidences which have come in the deposition of the applicant-wife and the other witnesses namely Bindeshwari Singh, Choudhary Charan Singh and Nawal Kishore Singh. The court has come to a conclusion that the petitioner is not maintaining his wife who is the applicant before the court. The court has assessed minimum income of the petitioner as Rs. 12,000/- per month. In the process, the court has relied upon the judgment of the Hon'ble Supreme Court in the case of **Reema Salkan versus Sumer Singh Salkan** reported in **(2019) 12 SCC 303**.

On perusal of the records, this Court finds that the conduct of the petitioner in not appearing before the court initially for about two years and then after appearance he did not comply with the order of the learned court whereunder he was directed to deposit the cost subject to which the order of ex parte hearing was recalled, further this Court finds that even after the year 2013 the case remained pending for about seven years but he did not make any effort to participate in the hearing of the



case by depositing the cost, no application was filed to recall or modify the cost imposed by the court. This Court, therefore, finds that the submission of learned counsel for the petitioner at this stage to afford an opportunity to the petitioner is a mere pretext in order to prolong the litigation for another one decade. What compels to take this view that the wife-opposite party has waited for the judgment for about one decade and the petitioner has throughout neglected the case.

This Court has noticed that the learned Principal Judge, Family Court, Khagaria has awarded only a sum of Rs. 4,000/- per month which by no means can be said to be an exaggerated amount. Even if income of the petitioner is taken as a labourer, the petitioner must pay a sum of Rs. 4,000/- per month to his wife. The pleadings in paragraph '8' and '10' of the application are mere vague and bald pleadings which have no basis to stand. There is no denial of the claim of the opposite party that the petitioner has got cultivable land in which grows bananas and he earns a substantial amounts from such cultivation. The petitioner seems to have made statements very cautiously in saying that there is no land in the name of the petitioner but he has not come out with a statement that he has no joint family land or other means of income. Even as regards



his claim of illness there is no prima-facie material before this Court to consider. The conduct of the petitioner as a whole does not require any sympathetic consideration.

This application has no merit. It is dismissed accordingly.

The learned court below shall proceed to execute the order forthwith in accordance with law.

(Rajeev Ranjan Prasad, J)

vats/-

U		T	
---	--	---	--

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'.

