

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.815 of 2018

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

Shivesh Kumar Yadav S/o Jitan Prasad Yadav, R/o Vill.- Thebari , P.S.- Katoria, District- Banka. At present R/o Vijaynagar, Naya Tola Sheetala Asthan Road, Banka, P.S.- Banka, District- Banka.

... .. Petitioner

Versus

1. State Of Bihar
2. Sharita Devi W/o Shivesh Kumar Yadav, R/o Vill.- Thebari, P.S.- Katoria, District- Banka, At present D/o Shyam Sundar Prasad Yadav, R/o Vill.- Tindobha, P.O.- Baniyakura, P.S.- Katoria, District- Banka.

... .. Opposite Parties

with

CRIMINAL REVISION No. 746 of 2019

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

Sharita Devi W/O Shivesh Kumar Yadav Resident Of Village- Thebari, P.S.- Katoria, District- Banka At Present D/O Shyam Sundar Prasad Yadav, Resident Of Tindobha, P.O. Baniyakura, Police Station Katoria, District- Banka.

... .. Petitioner

Versus

1. The State of Bihar
2. Shivesh Kumar Yadav S/O Jitan Prasad Yadav Resident of village- Thebari, P.S.- Katoria, District- Banka At present resident of Vijay Nagar, Naya Tola, Sheetala Asthan Road, Banka, P.S.- Banka, District- Banka.

... .. Opposite Parties

Appearance :

(In CRIMINAL REVISION No. 815 of 2018)

For the Petitioner	:	Mr. Ajay Mukharjee, Advocate
For the State	:	Mr. Ajit Kumar, APP
For the O.P. No. 2	:	Mr. Sadanand Paswan, Advocate
		Mr. Satish Kr. Sinha, Advocate

(In CRIMINAL REVISION No. 746 of 2019)

For the Petitioner	:	Mr. Sadanand Paswan, Advocate
		Mr. Satish Kr. Sinha, Advocate
For the State	:	Mr. Ajit Kumar, APP
For the O.P. No. 2	:	Mr. Ajay Mukherjee, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

11 17-08-2022

With the consent of the parties, both the revision
applications have been taken up together for consideration.



Cr. Revision No. 815 of 2018 has been preferred by the husband for setting aside of the impugned judgment dated 01.05.2018 passed by learned Principal Judge, Family Court, Banka in Miscellaneous Case No. 37 of 2015/Tr. No. 36 of 2018 by which the petitioner-husband has been directed to pay Rs.12,000/- per month to the applicant-wife from the date of the judgment.

Cr. Revision No. 746 of 2019 has been preferred by the applicant-wife seeking enhancement in the maintenance amount.

Learned counsel for the husband-petitioner has assailed the impugned order on the ground that the Principal Judge, Family Court, Banka has awarded an excessive amount of maintenance. It is submitted that the evidences laid before the learned Principal Judge, Family Court were to the effect that the petitioner is earning a salary of about Rs.24,000/- per month from Railways and he had some other liabilities on account of his second marriage and a son born out of the said marriage. As regards the agricultural land, the evidence was to the effect that the father of the petitioner owns about 5 bighas of land in which the petitioner, his brother and father all have share.

Learned counsel, thus, submits that the amount of



maintenance awarded to the applicant-wife is required to be reduced suitably taking into consideration the net salary of the petitioner.

In support of his contention, he has further brought on record the salary slip of the petitioner showing that at the relevant time, the petitioner was earning a little less than Rs.24,000/- per month. A copy of the affidavit filed on behalf of the petitioner has been served upon learned counsel for the applicant-wife.

On the other hand, learned counsel for the applicant-wife submits that as on today the salary of the petitioner has got increased, therefore, no interference is required on the quantum of the maintenance. It is further submitted that in any case the learned Principal Judge, Family Court, Banka has erred in awarding the maintenance from the date of judgment/order and not from the date of the application filed under Section 125 Cr.P.C. He relies on the judgment of the Hon'ble Supreme Court in the case of the Rajnesh Vs. Neha & Anr. reported in (2021) 2 SCC 324 to submit that the maintenance should have been allowed with effect from the date of the filing of the application.

Having regard to the submissions made on behalf of the parties and on perusal of the records, this Court finds



substance in the submission of learned counsel for the applicant-wife to the extent that the maintenance allowed to the applicant-wife should have been allowed with effect from the date of filing of the application under Section 125 Cr.P.C. To that extent, the learned court below is not correct in directing the husband-petitioner in Cr. Revision No. 815 of 2018 to pay the maintenance amount with effect from the date of judgment.

On the quantum of the maintenance, this Court finds substance in the submission of learned counsel for the husband-petitioner in Cr. Revision No. 815 of 2018. A perusal of the impugned judgment would show that the evidences were led before the Principal Judge, Family Court, Banka showing that the petitioner is a Class 'D' employee in Railways and his monthly income was less than Rs.24,000/- per month. No agricultural income was proved. Despite all these evidences on the record, the learned Principal Judge allowed a sum of Rs.12,000/- per month as maintenance and no care was taken to consider that the petitioner has got a minor son out of the second marriage and so far as the legitimacy of a child is concerned, the law always protects the legitimacy of the child and he would be entitled for his maintenance. These aspects have been apparently missed out by the learned Principal Judge, Family Court.



Even today in course of hearing, an uncontroverted document in form of salary slip of the petitioner has been placed on record showing his net pay as on 01.07.2019 was only Rs.23,254/- after a deduction of Rs.2308 which were statutory in nature.

This Court is, therefore, of the considered opinion that the impugned judgment requires modification in the quantum of maintenance. The amount of maintenance is fixed at Rs.9,000/- per month which will be payable to the applicant-wife with effect from the date of her application. With the aforesaid modifications in the impugned judgment both the revision applications are disposed of.

This Court has been informed that the parties are looking for one time settlement in the learned court below. If it is so, it is always open for the parties to proceed.

(Rajeev Ranjan Prasad, J)

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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'.

