

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1262 of 2016

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

1. MD. SADDAM HUSSAIN @ MD. SADDAM and ANR Son of Md. Asgar Ali, through the natural guardian Asgar Ali, Son of Late Niyajuddin, resident of Village- Rakshi, Post Office- Madhura, Police Station- Korha, District- Katihar.
2. Asgar Ali, Son of Late Niyajuddin, Resident of Village- Rakshi, Post Office- Madhura, Police Station- Korha, District- Katihar, natural guardian of petitioner No.1.

... .. Petitioners

Versus

Bibi Altanoor Khatoon Daughter of Jahangir Alam, Resident of Badi Rakshi, Post Office- Madhura, Police Station- Korha, District- Katihar.

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.
For the Respondent/s : Mr.Akhileshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 28-11-2022 No one appears for the petitioners.

In Criminal Revision No. 1233 of 2016 this Court has recorded as to how in the revision matters of the year 2016 which are related to the maintenance of neglected women and children, in 80 - 90% cases the Lawyers are not appearing and this Court has no assistance. This Court has noticed that under such circumstances instead of simply dismissing the revision application for default leaving room for petitioner to file restoration application after some time and then get it restored and in this manner prolong the hearing of the case, it would only be just and proper to go through the materials available on the



record and dispose it of on its own merit.

Proceeding on the same line, this Court has considered this revision application.

Petitioner, in this case, is aggrieved by and dissatisfied with the order dated 19/09/2016 passed in Maintenance Case No. 184 of 2012 by the learned Additional Principal Judge, Family Court, Katihar whereby whereunder the maintenance amount of Rs. 3000/- has been allowed to the applicant-wife and the Petitioner No. 1 has been directed to pay the same.

On perusal of the impugned order, it would appear that the Nikah between the Petitioner No. 1 and the Opposite Party was performed on 01.01.2012. The applicant alleged that there was a demand of dowry in her *sasural* and due to non-fulfillment of same, she was ill-treated physically as well as mentally. The further case of the applicant is that on 10.01.2012 she was brutally assaulted by the Opposite Party and his family members and the applicant was thrown out of the matrimonial house saying that the Opposite Party shall perform a second marriage. Since then the applicant was residing in her *Maika*. In this connection Korha P.S. Case No. 238/2012 has been registered for offences against sections 341, 323, 504,



498(A)/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.

The case of the applicant was that she has no independent income whereas the Opposite Party has got 2½ bighas of agricultural land and he earns through contract labour in Delhi and Punjab. The applicant claimed that the Opposite Party has got an yearly income of Rs. 2,00,000/- to Rs. 2,50,000/-.

The Opposite Party appeared in this case in the court below and took a stand that Muslim marriage is a contract, at the time of marriage he was only 14 years 10 months old, therefore this marriage was not valid. He further submitted that he was declared juvenile by the Juvenile Justice Board in Case no. 2214/2012 and for dissolution of marriage a case bearing No. 83/2012 is pending in the court of law. He has sought a declaration that his marriage with the applicant is no marriage in the eye of law right from the beginning.

To support her case, the applicant deposed herself and she was supported by two other witnesses. The Nikahnama was exhibited as Exhibit '1'. The Opposite Party brought three witnesses to support his case. The learned Family Court found that the applicant witness no. 1 Morfat Hussain has proved the



Nikahnama. He further deposed that under Muslim Customary Law a boy aged 15 years can enter into a valid marriage and further he stated that the elder brother of the Opposite Party had not disclosed that the Opposite Party is minor. The Opposite Party has himself not disclosed that he was minor and from naked eyes he looked major. The Family Court has recorded that this witness has not been cross-examined on this point and the Opposite Party has not adduced any evidence to show that he was below 15 years of age. Even the applicant-wife was not cross-examined as respect the age of the Opposite Party. For these reasons the learned Family Court has accepted that the applicant-wife was legally wedded wife of the Opposite Party and she was entitled to seek maintenance.

On the quantum of income also the learned court found that the applicant witness no. 2 and her father who have deposed were not cross-examined on the quantum of income, therefore, their statement remained unchallenged.

In these circumstances, the learned Family Court has allowed maintenance of Rs. 3000/-. The maintenance case was filed in the year 2012 and by now 10 years have gone. The amount allowed is only Rs. 3000/- per month which hardly comes to Rs. 100/- per day and by no stretch of imagination it



can be said to be excessive. In the case of **Anju Garg and Another Vs. Deepak Kumar Garg reported in 2022 SCC Online SC 1314**, in paragraph ‘10’, the Hon’ble Supreme Court has observed as under:-

“10. This Court had made the above observations as the Court felt that the Family Court in the said case had conducted the proceedings without being alive to the objects and reasons, and the spirit of the provisions under Section 125 of the Code. Such an impression has also been gathered by this Court in the case on hand. The Family Court had disregarded the basic canon of law that it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children. The husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds mentioned in the statute. In **Chaturbhuji v. Sita Bai reported in (2008) 2 SCC 316**, it has been held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy. As settled by this Court, Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children. It also falls within the Constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution of India.”

In the present case, the petitioner has not raised any cogent reason so as to invite an interference with the impugned order by this Court.

This revision application has no merit. It is dismissed accordingly.

The learned Principal Judge, Family Court, Katihar is directed to enforce the impugned order as expeditiously as



possible. In case, it is found that the petitioner has not paid the maintenance amount to the applicant-wife in the name of pendency of the revision application, he will also be liable to pay a cost of Rs. 25,000/- which would be realized from him and the same will be made available to the applicant-wife with the outstanding amount.

(Rajeev Ranjan Prasad, J)

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