

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.766 of 2018**

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

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Urmila Devi W/o Jai Narayan Rai @ Jay Narayan Yadav, R/o Vill.- Salempur,
P.O.- Tengraha, P.S.- Meenapur, Distt.- Muzaffarpur.

... .. Petitioner

Versus

Jai Narayan Rai @ Jay Narayan Yadav S/o Ramashray Rai, R/o Vill.-
Salemapur, P.O.- Tengraha, P.S.- Meenapur, Distt.- Muzaffarpur.

... .. Respondent

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Appearance :

For the Petitioner/s : Mr.Kumar Praveen, Advocate
For the Respondent/s : Mr.Nachiketa Jha, Advocate

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

4 31-08-2022 Heard learned counsel for the petitioner and learned
counsel for the opposite party.

This revision application has been preferred for
setting-aside the judgment and order dated 06.04.2018 passed
by learned Principal Judge, Family Court, Muzaffarpur in
Maintenance Case No. 06/2011 by which the learned Principal
Judge has directed the O.P. to pay Rs. 4000/- per month to the
applicant/petitioner from the date of order and O.P. is further
directed to pay the maintenance allowance by 10th day of each
month of the calendar year as the interim maintenance of Rs.
3000/- was ordered to pay on 16.11.2014, so opposite party is
directed to pay all arrears of ad interim maintenance to the
applicant/petitioner after deducting the amount already paid



within four months from the date of order.

Learned counsel for the petitioner submits that the opposite party is a retired headmaster and he is having substantial amount on account of his pensionary benefits but the learned court below has awarded only a sum of Rs. 4000/- per month as maintenance. It is his further submission that the opposite party has got agricultural income as well.

Learned counsel for the opposite party submits that the petitioner and the opposite party solemnized their marriage in the year 1970. They have got two daughters out of the said wedlock. It is submitted that during that period, the petitioner herself got the opposite party to perform a second marriage to beget a son. It is submitted that believing in Hindu mythology, the opposite party, with consent of the petitioner, performed a second marriage and out of the said marriage he has got three daughters and one son.

It is submitted that the second marriage was performed in the year 1995. There was no complaint against the opposite party but at a belated stage at the instance of her son-in-law the petitioner filed this maintenance case in the year 2011.

Referring to Annexure '2' to the revision application, learned counsel for the opposite party submits that it is the



categorical stand of the opposite party in the court below that this petitioner is residing in the house situated at Muzaffarpur and she is collecting Rs. 3000/- as monthly rent from the tenants inducted in the said house. Learned counsel submits that in this way the petitioner has got residential accommodation and is collecting rent amount as well as getting the maintenance amount from the opposite party.

Learned counsel submits that he has instruction to say that opposite party is paying the maintenance amount at the rate of Rs. 4000/- per month regularly and there is no default in such payment.

Responding to the aforesaid submission of learned counsel for the opposite party, learned counsel for the petitioner submits that opposite party is not paying the maintenance amount regularly. He further submits that the statement made by the opposite party in the learned court below in Annexure '2' saying that this petitioner is collecting the rent amount of Rs. 3000/- per month is also not correct. Learned counsel, however, submits that if the opposite party is taking this stand then the petitioner may be allowed to collect the rent amount from the tenants, if any. Learned counsel submits that in fact there is no tenant in the house. There are four rooms in the said house, one



room is being occupied by this petitioner whereas three other rooms are occupied by the children from the second wife.

Having heard learned counsel for the petitioner and learned counsel for the opposite party, this Court is of the considered opinion that the opposite party has to either abide by his stand taken in the learned court below as well as in this Court allowing the petitioner to collect the rent amount of Rs. 3000/-, if at all, there is any tenant in the house or pay an amount of Rs. 3000/- in addition to the maintenance amount of Rs. 4000/- to the opposite party. In this way, the opposite party would be entitled for a total amount of Rs. 7,000/- per month.

This Court has noticed the stand that the petitioner is collecting rent amount of Rs. 3000/- was taken by the opposite party in the year 2012 and he is still reiterating his stand.

This application is being disposed of by modifying the impugned order to the extent that the opposite party shall pay a sum of Rs. 4000/- per month with effect from the date of the application under Section 125 Cr.P.C. Further, if the petitioner is not collecting any rent amount then she would be entitled for Rs. 3000/- per month with effect from the date of this order.

The learned Principal Judge, Family Court, Muzaffarpur shall call upon the opposite party to file an



affidavit showing up to date payment of the maintenance amount at the rate of Rs. 4000/- per month in terms of the order above.

The court below had granted the maintenance with effect from the date of the interim order which is not in accordance with law and therefore this Court has modified the said order to make it Rs. 4000/- per month from the date of the application. The impugned order was passed on 06.04.2018. If the court finds that some payments have remained outstanding against the opposite party, a reasonable installment may be fixed for the entire payment till full realization.

This Revision Application is disposed of accordingly.

(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'.

