

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.661 of 2018**

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

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Madanjeet Kumar Singh @ Madanjeet Singh Son of Late Ram Balak Singh,
Resident of Mohalla- Mohanpur Kashipur, P.S.- Samastipur Town, District-
Samastipur.

... .. Petitioner

Versus

Ekta Singh wife of Madanjeet Kumar Singh @ Madanjeet Singh, Son of late
Ram Balak Singh, Resident of Mohalla- Mohanpur Kashipur, P.S.-
Samastipur Town, District- Samastipur, at present daughter of Sri Anil Kumar
Singh, Resident of Village and Post Office- Basudeopur, P.S.- Kalyanpur,
District Samastipur.

... .. Respondent

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Appearance :

For the Petitioner : Mr.Kundan Kumar, Advocate
For the Respondent : Mr.Ranjan Kumar, Advocate

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

6 14-07-2022

Re.: I.A. No. 1986 of 2018

This interlocutory application has been filed for
condonation of delay of 114 days in filing the instant criminal
revision application.

For the reasons stated in the application, the delay is
condoned.

Accordingly, I.A. No. 1986 of 2018 stands allowed.

Re.: Cr. Rev. No. 661 of 2018

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

The petitioner, in the present case, is aggrieved by and



dissatisfied with the judgment dated 08.11.2017 passed by learned Principal Judge, Family Court, Samastipur in Maintenance Case No. 220 of 2014. By the impugned judgment, in exercise of his power under Section 125 Cr.P.C. the learned Principal Judge has fixed a sum of Rs. 6,000/- per month as maintenance payable to the applicant-wife with effect from the date of her application dated 11.12.2014.

It appears on perusal of the impugned judgment that before the learned Principal Judge, the opposite party – husband submitted that he is doing his Ph.D. in the Department of Economics, Magadh University and he has no independent source of income. He also denied to have any land in his name. He denied that he had a job in Samsung Company at Ranchi. His case was that the applicant-wife does not want to live with him and she used to flee away from the house of the opposite party.

Learned Principal Judge framed three points for consideration and point no. 2 is as to whether the opposite party has refused or neglected to maintain the applicant having sufficient means of income. The learned Principal Judge has recorded in paragraph ‘8’ of the impugned judgment that “the applicant has fairly stated that the OP is not doing any job. ...”.



The applicant witness no. 3 who happened to be the father of the applicant -wife deposed that the opposite party lives in Ranchi and he works in Samsung Company but in support thereof no proof was brought on the record.

The opposite party deposed in his examination-in-chief that his wife has done post-graduation and is presently imparting teaching in a private school by which she is getting Rs. 10,000/- monthly income. He further deposed that he had no source of income and had no cultivable land in his name. He has no house in his name.

The learned Principal Judge has though noticed the evidence of the opposite party and recorded that so far as the job of the opposite party in Samsung Company is concerned, no chit of papers or any conclusive evidence has been brought on record by the applicant. No detail of any land or house in the name of the opposite party was brought before the learned court, therefore, the actual and exact source of income has not been established.

The learned Principal Judge proceeded to pass the impugned judgment saying that the opposite party being husband of the applicant has neglected his wife and is also not providing any maintenance to her and this being a socio-legal



obligation upon the husband, he has to discharge his duty towards his wife. For these reasons, the learned Principal Judge has directed the opposite party – petitioner to pay a sum of Rs. 6,000/- per month to the applicant – wife.

After hearing learned counsel for the parties on 11.07.2022, this court granted time to both the parties to place on record the evidence regarding their employment. The order dated 11.07.2022 is being reproduced hereunder:-

“Both the parties are directed to file their respective affidavits enclosing the copies of their all bank accounts for the period 2017-2018 till 2021-2022.

It is the contention of learned counsel for the petitioner that the petitioner is not serving in the Samsung Company and has no independent source of income, he is presently doing Ph.D. The petitioner shall bring all these facts and materials to support his contention.

At the same time, it is the submission on behalf of the petitioner that his wife who is opposite party before this Court has got a teaching job as Panchayat Teacher. Let this fact be also brought on the record by the parties.

List this matter on 14.07.2022 under the same heading maintaining its position.”

Today a supplementary affidavit has been filed on behalf of the petitioner. In paragraph ‘8’ thereof it is categorically stated that the petitioner has never served in Samsung Company. He has also brought on record the copy of the ledger of the bank account of Bank of India from which it appears that in most of the years there were negligible kind of transactions in his account. He has placed on record a copy of the receipt of Magadh University, Bodh Gaya showing that the



petitioner had deposited registration fee with the Magadh University. Copy of the supplementary affidavit has been served upon learned counsel for the applicant wife who is opposite party in this court.

Learned counsel for the opposite party submits that he tried his level best to contact the opposite party but is unable to contact her and she is not in touch with him in connection with this case. Learned counsel, thus, submits that this application may be disposed of on the basis of the materials available on the record.

Having heard learned counsel for the parties and on perusal of the records, this court is of the considered opinion that the learned Principal Judge, Family Court, Samastipur has completely erred in fixing the quantum of maintenance in the present case. Learned court itself admits that from the evidence available on the record the actual and exact source of income of the husband who was opposite party in the court below could not be established. In these circumstances, the court should have called upon both the parties to submit the details of their bank accounts and other properties and only after considering the same an appropriate order could have been passed.

Recently in the case of **Rajnish v. Neha & Ors.** reported in (2021) 2 SCC 324; the Hon'ble Supreme Court has laid



down the guidelines on this behalf. This Court is reproducing the relevant paragraph from the said judgment as under:

“(b) Payment of Interim Maintenance

129. The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrates Court concerned, as the case may be, throughout the country.

(c) Criteria for determining the quantum of maintenance

130. For determining the quantum of maintenance payable to an applicant, the court shall take into account the criteria enumerated in Part B — III of the judgment. The aforesaid factors are however not exhaustive, and the court concerned may exercise its discretion to consider any other factor(s) which may be necessary or of relevance in the facts and circumstances of a case.

(d) Date from which maintenance is to be awarded

131. We make it clear that maintenance in all cases will be awarded from the date of filing the application for maintenance, as held in Part B — IV above.”

In the light of the discussions made hereinabove, this court sets aside the impugned judgment and directs the learned Principal Judge, Family Court, Samastipur to consider the application under Section 125 Cr.P.C. afresh in the light of the judgment of the Hon’ble Apex Court in the case of Rajnish (supra).

This application is, thus, allowed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

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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'.

