

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1250 of 2018

In
Miscellaneous Appeal No.582 of 2018

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

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Gorakh Kumar Mahto @ Gorakh Mahto, son of Muneshwar Mahto, resident of village – Kalyanpur, P.O. - Baijalpur, P.S. - Sonapur, District – Saran.

... .. Petitioner

Versus

Ruby Kumari, daughter of Radha Kant Prashad, resident of Chakbasu Kachi Sarai, P.S. Mithanpura, District – Muzaffarpur.

... .. Opposite Party

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Appearance :

For the Petitioner : Mr.Archana Sinha @ Archana Shahi, advocate
For the Opp. Party : Mr.Anand Kishore Choudhary, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 19-09-2022 Heard learned counsel for the petitioner and

learned counsel for the opposite party.

Petitioner, in this case, is aggrieved by and dissatisfied with the judgment dated 25.04.2018 passed by learned Principal Judge, Family Court, Muzaffarpur in Maintenance Case No. 370/2015. By the impugned judgment the learned Principal Judge has been pleased to allow a monthly maintenance of Rs. 3000/- to the applicant-wife.

Learned counsel for the petitioner has taken a plea that in this case the applicant-wife had deserted her husband-petitioner. Learned counsel submits that in a



divorce proceeding the learned Principal Judge has granted decree of divorce to the petitioner on the ground of desertion. The said judgment and decree is not under challenge.

It is submitted that in a case where the wife has deserted her husband, in terms of sub-section (4) of Section 125 Cr.P.C., she would not be entitled to get maintenance from her husband.

This case was taken up earlier for consideration on 27.02.2020. On the said date having noticed the submission of learned counsel for the petitioner, on the request of learned counsel for the opposite party, this Court granted him time to seek instruction and revert to this Court for final argument. Thereafter, due to intervening pandemic situation the matter could not be taken up. On 15.09.2022, on the request of learned counsel for the parties, the matter was once again adjourned to enable learned counsel for the parties to exchange their respective pleadings.

Today, learned counsel for the opposite party has informed that against the judgment and decree of divorce the applicant-wife has not filed any appeal or any



application seeking setting-aside of the *ex parte* judgment and decree.

Having heard learned counsel for the petitioner and learned counsel for the opposite party, this Court finds that the judgment and decree granting divorce to the petitioner on the ground of desertion by his wife is not under challenge before any competent court of law. This Court has, therefore, reasons to believe that the said judgment and decree has attained finality. In such circumstances, in terms of sub-section (4) of Section 125 Cr.P.C., the impugned judgment granting maintenance to the opposite party is liable to be set-aside.

The impugned judgment is, accordingly, set-aside.

This application is 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'.

