

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.87 of 2021**

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

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Satish Kumar Son Of Sri Bhagwan Das Resident Of Village - Lodipur, Post - Dewsa, P.S. And District - Sheikhpura.

... .. Petitioner

Versus

1. Rinku Kumari Wife Of Satish Kumar Daughter Of Naresh Das, Resident Of Village - Lodipur, Post - Dewsa, P.S. And District - Sheikhpura.
2. Vishal Son Of Satish Kumar Resident Of Village - Lodipur, Post - Dewsa, P.S. And District - Sheikhpura.
3. Aman Kumar Son of Satish Kumar Resident of Village - Lodipur, Post - Dewsa, P.S. and District - Sheikhpura.
4. Prem Son of Satish Kumar Resident of Village - Lodipur, Post - Dewsa, P.S. and District - Sheikhpura. Son of Satish Kumar

... .. Opposite Parties

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**Appearance :**

For the Petitioner/s : Mr. Manish Kumar No.2, Advocate  
For the Respondent/s : Mr. Ram Sevak Choudhary, APP

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

2      24-06-2022                      Heard Mr. Manish Kumar No. 2, learned counsel for the petitioner and Mr. Ram Sevak Choudhary, learned APP for the State.

Mr. Manish Kumar No.2, learned counsel for the petitioner assails the impugned order passed by learned Principal Judge, Family Court, Sheikhpura in Maintenance Case No. 16M of 2018 on the solitary ground that earlier the petitioner has filed a divorce case against his wife on the ground of adultery.

Learned counsel submits on the strength of the order dated 13.02.2018 passed in Matrimonial (Divorce) Case No. 32 of 2016 that learned Principal Judge, Family Court has directed to



conduct DNA test of all the sons of opposite party no. 1 to meet the ends of justice. It is his submission that the DNA test has not been done till date.

It is his submission that the Maintenance Case No. 16M of 2018 was taken up for consideration by learned Principal Judge, Family Court and on the basis of the materials on the record, a sum of Rs.9,000/- per month has been fixed towards maintenance of the three children. Since the wife of the petitioner has been found engaged as a teacher earning a salary of Rs.13,000/- per month at the relevant time, no maintenance has been allowed to her. It is his submission that the maintenance awarded to the three children is not justified even as the DNA test of them are pending.

On the other hand, learned APP for the State submits that the maintenance case was registered separately under Section 125 Cr.P.C. In the said case, the opposite party-petitioner appeared but for the reasons best known to him he chose not to file any written statement. It is submitted that in paragraphs '2' and '4', the learned Family Court has recorded that the opposite party-petitioner appeared but not filed any written statement. He did not produce any witness and only chose to cross-examine all the witnesses of the applicant. It is submitted that the petitioner has neither contested that statement recorded in the impugned order in paragraphs '2' and '3' while filing the present revision application



nor it is the case of the petitioner that he was not given appropriate opportunity to defend himself. There is no such whisper to this effect in the pleading before this Court.

It is, thus, submitted that the learned Principal Judge, Family Court is fully justified in passing of the order on the facts appearing from the evidences of the applicant and her witnesses. Admittedly, the petitioner is a Government servant in the Railway Department, his monthly income is Rs.70,000/- per month from all sources, he has got at least 5 *bighas* of agricultural land at village Lodipur and *pakka pokhata* house at Lodipur.

Having heard learned counsel for the petitioner and learned APP for the State as also on perusal of the records, this Court finds that the learned Principal Judge, Family Court has proceeded to consider the application under Section 125 Cr.P.C. on the basis of the materials available on the record. There are some admitted facts of the case and even at the revisional stage, learned counsel for the petitioner does not deny that he is a Government servant and has an income of at least a sum of Rs.70,000/- per month from all sources. The only contention is that the DNA test of the three children have not been conducted and in the divorce proceeding, he has taken a plea of adultery against his wife.

In the opinion of this Court, a mere plea of adultery in the divorce proceeding but without contesting the case of the wife



under Section 125 Cr.P.C., the petitioner cannot gain an advantage so as to deprive the children from claiming the maintenance at this stage. The impugned order is passed on the materials on the record and no infirmity or illegality may be found with the order.

At this stage, learned counsel for the petitioner submits that the petitioner is also looking for an amicable settlement and for that purpose the matter may be sent to the Mediation Centre attached to the learned court below.

In the opinion of this Court, if the petitioner is willing to go for mediation in order to amicably resolve the issues, he may file an appropriate application in the divorce proceeding itself which will be considered expeditiously by the learned Principal Judge, Family Court, Sheikhpura.

This application stands 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'.

