

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.374 of 2018

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

Sahnaz @ Sahnaz Begum @ Shahnaz Begum, W/o Md. Chote , R/o Vill.-
Churi Patti, P.S.- Bahadur Ganj, Distt.- Kishanganj at present residing at
Churi Patti, P.S.- Powakhali, District- Kishanganj. Petitioner
Versus

1. The State of Bihar.
 2. Md. Chhote, S/o Md. Sabbir, R/o Vill.- Churi Patti, P.S.- Bahadur Ganj,
District- Kishanganj.
- Opposite Parties

Appearance :

For the Petitioner : Mr. Ram Prawesh Kumar, Advocate.
For the State : Mr. Akhileshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 30-08-2022 Heard learned counsel for the petitioner and the State.

The applicant-wife in the learned Family Court is aggrieved by and dissatisfied with the order dated 16.08.2017 passed by learned Principal Judge, Family Court, Kishanganj in Maintenance Case No. 119 of 2016 whereby and whereunder the learned court has allowed a maintenance of Rs.1,500/- only to the minor daughter of the petitioner. No maintenance has been allowed to the petitioner.

Learned counsel for the petitioner submits that the petitioner filed an application under Section 125 Cr.P.C. seeking maintenance for herself and her minor child. In her application, she claimed that her marriage was solemnised with O.P. No. 2 about two and four months ago according to Islamic Rites and Rituals. After two months of the marriage, the O.P. No. 2 and his



family members were behaving in a different manner and they started commenting upon the petitioner for bringing insufficient dowry. It is submitted that after sometime, the petitioner gave birth to a female child but soon thereafter she was thrown out of her matrimonial home.

Learned counsel submits that the petitioner is residing with her parents and her husband-O.P. No. 2 has completely neglected her and her minor daughter. It is submitted that the O.P. No. 2 is running his business of mutton shop at Bahadurganj market and is also engaged in business of sale and purchase of animals like he-goats and from these sources, he earns about Rs.60,000/- per month.

It is submitted that in course of evidence, the petitioner adduced oral evidences. Her case was supported by the witnesses who are the father and the mother of the petitioner.

The learned Principal Judge, Family Court has found that according to the mother of the petitioner (AW 3), the sister of her son-in-law happened to be the daughter-in-law of her house and now she was also not residing at her house, therefore it was an admitted case of cross-marriage relationship in the family of both the parties. For this reason, the learned Principal Judge doubted that the applicant was assaulted for dowry and she was driven out from the house.



After analysing the evidence of the husband-O.P. No. 2, the learned Principal Judge has concluded that this petitioner has no independent source of income. But, the court disbelieved the case of the applicant-wife saying that she had failed to explain just cause as to why she was refusing to go back to her matrimonial house. The Court also disbelieved her statement that her husband had divorced her on the ground that this stand was taken at a belated stage of the case. The learned court below has, however, admitted that the minor daughter of the O.P. No. 2 is with the applicant-wife and she cannot be separated from the applicant-wife, therefore, she is entitled for maintenance.

On the quantum of income, the learned court below has come to a conclusion that O.P. No. 2 earns about Rs.300-400/- per day. This has been fixed in absence of any evidence relating to the volume of sale of the mutton shop of O.P. No. 2. Considering the other liabilities of the O.P. No. 2, the court has fixed a sum of Rs.1,500/- as maintenance for the minor daughter.

Learned counsel submits that the learned court below has completely erred in refusing to grant maintenance to the applicant-wife and an adequate amount of maintenance to the minor daughter.

In his submissions, the learned court below could not appreciate that a proceeding under Section 125 Cr.P.C is in the



nature of a summary proceeding and it cannot be decided by discussing the intricacies of the evidences in form of a long drawn trial. It is submitted that the impugned order is liable to be set aside.

In this case notice has been validly served upon husband-O.P. No. 2 but he has chosen not to enter appearance.

In these circumstances, this Court has heard the matter.

The revision application has been filed with a delay of 107 days. Considering that the petitioner is a poor and downtrodden lady having no sufficient income to maintain herself and she is illiterate as well, the reasons assigned in the application seeking condonation of delay for belated filing of the revision application are cogent and sufficient reasons for condonation of delay, the delay is condoned.

On a reading of the impugned order, this Court comes to a considered conclusion that the learned Principal Judge, Family Court, Kishanganj has committed grave error in appreciating the materials available on the record. This Court finds that the learned Principal Judge, proceeded to consider Section 125 Cr.P.C. application as if it was a suit and it required a full-fledged trial. He framed as many as four points for consideration. The first point for consideration was as to whether the applicant has refused the offer of O.P. No. 2 on just ground. He has discussed the evidences of the



parties. He has made observations on the consistencies, inconsistencies and contradictions like a trial court and ultimately concluded that the entire case of the petitioner is based on the ground of demand of dowry and torture for dowry and she had not stated in her entire application with regard to divorce having been given by the O.P. No. 2.

This Court, therefore, finds that the discussions made by the learned Principal Judge, Family Court, Kishanganj as regards point no. 'a' would be irrelevant and no finding could have been recorded on such issues, no adverse opinion could have been drawn against the petitioner. Those were not required to be examined in a proceeding under Section 125 Cr.P.C.

The learned Principal Judge has come to a conclusion that the applicant-wife is unable to maintain herself and her minor daughter, despite this position he has not granted any maintenance to the applicant-wife and a meagre sum of Rs.1,500/- has been awarded to the minor daughter. In terms of the judgment of the Hon'ble Supreme Court in the case of **Rajnesh vs. Neha & Ors.** reported in **(2021) 2 SCC 324**, the court could have invoked its power under Section 106 of the Evidence Act calling upon the O.P. No. 2 to file an appropriate affidavit but even that has not been done. The applicant has no income at all whereas the O.P. No. 2 is running a business of mutton shop and is established in his



business. The minor daughter should have been allowed a reasonable amount.

This Court, therefore, finds that the applicant-wife is also entitled to get maintenance. This Court is of the considered opinion that in the present days' economic condition and price index at least a sum of Rs.3,000/- to the applicant-wife and Rs. 3,000/- to her minor daughter is required to be allowed as maintenance.

The O.P. No. 2 is directed to pay a sum of Rs.3,000/- to the petitioner and a further sum of Rs. 3,000/- to his minor daughter w.e.f. the date of filing of the application under Section 125 Cr.P.C.

The impugned judgment stands modified to the extent indicated above.

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'.

