

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.520 of 2018

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

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Anand Kumar S/o Sri Prasidh Narayan Roy, R/o Vill. P.S.- Matihani, District-
Begusarai.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Rima Kumari D/o Braj Bhushan Choudhary, R/o Vill.- Kabela, P.S.-
Parbatta, District- Khagaria.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Manish Dhari Singh, Adv.
For the O.P.No.1	:	Mr.Akhileshwar Dayal, APP
For the O.P.No.2	:	Mr. Praveen Kumar Agrawal, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 05-07-2022 Heard learned counsel for the petitioner and learned
counsel for the opposite party no.2.

Petitioner is aggrieved by and dissatisfied with the
order dated 12.12.2017 passed by the learned Principal Judge,
Family Court, Khagaria in Maintenance Case No.04/2014
whereby and whereunder application filed by the opposite party
no.2 under Section 125 Cr.P.C. was allowed and the petitioner
was directed to make payment of Rs.7000/- per month as
maintenance to the opposite party no.2.

Learned counsel for the petitioner has assailed the
impugned judgment/order mainly on the ground that the
petitioner had been earlier married on 11.07.2017 with one



Shabnam Kumari but he was forcefully and deceitfully abducted from his village on 12.11.2013 at around 4.00 pm in the evening and was taken to some where to Deoghar and brought back to village Kabela on 14.11.2013 from where he managed to flee away from confinement and came to his house on 14.11.2013. In this connection, he lodged a complaint case No.2514C/2013 on 15.11.2013 in the court of learned C.J.M., Begusarai alleging his abduction. In the said complaint case, the father of opposite party no.2 and his agnates were released on bail after their surrender.

Learned counsel submits that the opposite party no.2 has raised a false claim of marriage with the petitioner and in this connection she has lodged a case under Section 498A and 494 of the Indian Penal Code as also Section 4 of the Dowry Prohibition Act on 08.01.2014 which has been registered as Complaint Case No.47C/2014. It is submitted that the applicant-opposite party filed an application seeking maintenance claiming that she is the legally wedded wife of the petitioner. In support of her claim she examined herself and three other witnesses. The claim of the applicant-wife was contested by the present petitioner who was opposite party in the learned court below. He brought five witnesses in the dock and examined



them in support of his case.

The learned court below found that though the opposite party had brought five witnesses in support of his case but he had not presented himself for examination and cross-examination. The learned court below came to a conclusion that the opposite party had failed to bring any evidence to show that the applicant is raising a false claim of her being wife of the petitioner. He had not brought any evidence to show that the applicant-wife had any independent income to maintain herself.

The learned trial court found that there was an admitted position that this petitioner is a constable in Bihar Police and he was earning a monthly salary of Rs.20,400/- at the relevant time. Besides that he had cultivable land of about six bighas. Considering the materials on the record, the learned trial court has awarded a sum of Rs.7,000/- per month to the applicant-wife as maintenance with effect from the date of the application i.e. 15.01.2014.

In course of hearing, learned counsel for the petitioner has drawn the attention of this Court towards an enquiry report submitted by one Sri Bimal Das, sub-inspector of police, Police Centre, Patna as contained in Annexure-6 to the application. An attempt was made to impress upon this Court with the help of the said report to take a view that the marriage between the petitioner



and the opposite party has not been solemnized in accordance with law.

The application has been opposed by learned counsel for the opposite party. Learned counsel submits that the opposite party is a legally wedded wife of the petitioner and till date no court of law has declared that there was no marriage between the petitioner and the opposite party in the eye of law. Learned counsel further points out that the petitioner has been trying to concoct a story to avoid his liability to pay maintenance to his wife. According to him, if he was abducted from his village at about 4.00 PM on 12.11.2013 and then he was taken to Deoghar and from there he was taken to village Kabela, it seems highly improbable that no FIR in this regard would be lodged by any of his family members for three days. When he returned home then he claims to have filed a complaint petition and the said complaint case is still pending for trial. Under these circumstances, it is submitted that the allegations made by the petitioner cannot be taken as sacrosanct to deprive his wife from getting her maintenance.

Learned counsel submits that so far as Annexure-6 is concerned, it seems to be a collusive kind of report prepared by Sri Bimal Das, sub-inspector of police, otherwise how copy of such report may come in the hand of the petitioner. Learned counsel



takes strong exception to the observations made in the concluding paragraph of the said report by the sub-inspector of police who seems to have crossed all limits and has used certain objectionable words which cannot be expected from an officer serving in the uniform service. The remarks made by him are highly derogatory and indignified. Lastly it is submitted that the impugned order does not suffer from any illegality or infirmity. The fact that the petitioner did not come forward to deny his marriage by placing himself in the dock in course of evidence would go against him and learned counsel submits that this Court should draw an adverse inference against this petitioner because despite the fact that the applicant-wife was claiming a marriage with him he withheld himself and did not come forward to testify in course of evidence.

Consideration

Having regard to the submissions noted hereinabove and the materials available on the record, this Court is of the considered opinion that the learned Principal Judge, Family Court, Khagaria has rightly appreciated the materials on the record particularly the evidences which were adduced on behalf of the parties. The applicant-wife had claimed that after her marriage she had gone to her matrimonial home where she had stayed for six days. Her husband is a constable in police service and he has



cultivable land of six bighas whereas the applicant-wife had no income for her livelihood. This evidence of applicant-wife could not be demolished. The learned Principal Judge, Family Court has also rightly taken into consideration the fact that the opposite party had not come forward to support his case in the dock.

In the opinion of this Court, the proceeding under Section 125 Cr.P.C. is a summary proceeding. It is a benevolent piece of legislation to help the neglected women who have no independent source of income. Sometimes production or non-production of a witness in the dock may in itself not be sufficient to record a finding against him but in the given facts of the case where the applicant-wife had filed the application claiming maintenance against the petitioner saying that she was duly wedded wife of the petitioner and she had herself come in the dock to testify, in the opinion of this Court, it was incumbent upon the petitioner to produce himself in the witness box to testify and it was all the more necessary when he was flatly refusing to have performed marriage with the applicant-wife. If the petitioner has withheld himself from presenting to testify in the court room, it gives rise to an adverse inference against him. He avoided his scrutiny in course of evidence. Every case depends on the facts of that case and a slight change in the facts of a case make a sea difference in the opinion of the Court. In this case, this Court is of



the view that the plea of the petitioner that the applicant is not his legally wedded wife would not inspire confidence of this Court. The Principal Judge, Family Court, Khagaria has, thus, not committed any error in awarding a sum of Rs.7000/- per month as maintenance to the wife-opposite party when the evidence suggested that the petitioner is a constable in Bihar Police and is having a salary of more than Rs.20,000/- at the relevant time. Over the period this has further gone up.

This Court has been informed by learned counsel for the opposite party no.2 that the petitioner is not making payment of the maintenance in terms of the order of the learned court below. This is despite the fact that there is no order of stay of the impugned judgment by this Court. He has successfully delayed the compliance of the judgment for about five years.

Under the circumstances, this Court directs the Senior Superintendent of Police/Superintendent of Police, Nalanda within whose jurisdiction the petitioner is posted to take immediate steps to direct the competent authority/drawing and disbursing authority of the petitioner to deduct the current maintenance amount of Rs.7000/- per month from the salary of the petitioner and remit the same in the account of the opposite party no.2 every month. The opposite party no.2 shall provide her bank account details to the Senior Superintendent of Police/Superintendent of Police,



Nalanda/concerned drawing and disbursing authority within one week from today.

As regards the arrears, the same shall be calculated with effect from 15.01.2014 as per the judgment of the learned court below and will be paid to the opposite party no.2 in equal monthly installments of Rs.5000/- per month till the entire outstanding amount with effect from 15.01.2014 till date is not paid. The petitioner shall also bring this order to the notice of his drawing and disbursing authority forthwith for compliance.

Let it be recorded that the observations in connection with the present case are made only for the purpose of the case and it is open for both the parties to raise all such issues as may be advised to them in the pending proceedings.

This revision 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'.

