

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.919 of 2018

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

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Anita Devi wife of Laldeshwar Sah resident of Village- Majia, P.O. Baksama,
P.S. Kathara Goraul O.P., District- Vaishali.

... .. Petitioner

Versus

1. State of Bihar
2. Laldeshwar Sah son of Late Mohan Sah resident of Village- Majia, P.O.
Baksama, P.S. Kathara Goraul O.P., District- Vaishali.

... .. Opposite Parties

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with

CRIMINAL REVISION No. 1217 of 2018

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

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Laldeshwar Sah S/o Late Mohan Sah, R/o Vill- Magia, Kathara Goraul, Dist-
Vaishali at Hazipur.

... .. Petitioner

Versus

1. State of Bihar
2. Anita Devi, W/o Sri Laldeshwar Sah, R/o Vill- Majioa, P.S.- Kathra Garaul,
Dist- Vaishali, at Hazipur.

... ..Opposite Parties

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Appearance :

(In CRIMINAL REVISION No. 919 of 2018)

For the Petitioner : Mr. Jitendra Narayan Sinha, Advocate

For the State : Mr. Ram Sevak Choudhary, APP

for the OP No. 2 : Mr. Dharmendra Kumar Paswan, Advocate

(In CRIMINAL REVISION No. 1217 of 2018)

For the Petitioner : Mr. Dharmendra Kumar Paswan, Advocate

For the State : Mr. Rajeev Nayan, APP

For the O.P. No. 2 : Mr. Jitendra Narayan Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 13-07-2022

These two criminal revision applications have been taken up
for consideration together with the consent of the parties.

2. The Cr. Revision No. 919 of 2018 has been preferred for
enhancement of the maintenance amount allowed to the petitioner in



Maintenance Case No. 71 of 2016 whereas Cr. Revision No. 1217 of 2018 has been preferred by the husband of the petitioner in Cr. Revision No. 919 of 2018 to set aside the order dated 08.06.2018 passed in Maintenance Case No. 71 of 2016.

3. Learned counsel for the petitioner in Cr. Revision No. 919 of 2018 submits that the petitioner was married to O.P. No. 2 about 33 years ago and after marriage, she was subjected to torture and cruelty for want of dowry by O.P. No. 2 and his family members but the petitioner tolerated everything at her sasural and live there and in the meantime, she was blessed with two sons and one daughter.

4. It is submitted that about 13 years ago, the O.P. No. 2 performed second marriage separately and started keeping another lady at a secret place which was not known to the petitioner. In the month of September, 2013 she went to her maika with the permission of her husband and on return, she found that the said lady was in the house and on enquiry the O.P. No. 2 disclosed that she was her second wife. It is submitted that when the petitioner raised a protest against such act of O.P. No. 2, she was ousted from the house after depriving her of her private belongings. She was ousted along with her children and since then she was living continuously through earnings of her labour work.

5. It is submitted that the petitioner has also lodged a complaint case bearing no. 3424 of 2013 in the court of learned CJM, Vaishali at Hajipur and the same is pending adjudication.



6. As regards her claim for maintenance, it is submitted that the petitioner has no regular source of income and she has been suffering from various types of diseases. Her sons are not interested in taking care of her. The O.P. No. 2-husband has settled business of tobacco with an earning of about Rs.25,000/- per month and from the agriculture, he has earning of about Rs.5,000/- per month. In order to support her case, the petitioner-wife has examined herself and other witnesses who have supported that the petitioner has no source of income whereas O.P. No. 2-husband has income of Rs.30,000/- per month.

7. The O.P. No. 2 who is the husband of the petitioner alleged that the petitioner has been living in adultery and she had fled away from the house of the O.P. No. 2. He denied that any child is born out of the wedlock between the petitioner and the O.P. No. 2. His case is that he has been residing separately since more than 20 years. He has denied his second marriage and submitted that he is landless and unemployed person and he is not able to pay any maintenance to the petitioner. He, however, did not produce any witness in support of his statements.

8. Learned counsel for the petitioner submits that despite the fact that O.P. No. 2 had not brought any evidence, the learned Principal Judge, Family Court has awarded only a paltry sum of Rs.2,000/- per month to the petitioner towards her monthly maintenance from the date of filing of the case.



9. It is submitted that according to the evidence of the petitioner, the O.P. No. 2 had income from tobacco business and he earns Rs.30,000/- per month but the learned Principal Judge has not accepted the same. Learned counsel, thus, requests this Court to enhance the maintenance amount.

10. On the other hand, learned counsel for the O.P. No. 2-husband in Cr. Revision No. 919 of 2018 who is the petitioner in Cr. Revision No. 1217 of 2018 submits that the impugned order awarding a sum of Rs.2,000/- per month as maintenance to the petitioner-wife suffers from illegality and infirmities. It is submitted that the petitioner has concocted a false story. The marriage between the parties had taken place way back 33 years ago but after 2-3 years of marriage she had run away with another person and it was the understanding between the parties at the relevant time not to file any case with regard to the missing. It is submitted that the O.P. No. 2-husband had filed a petition for DNA test of his sons and daughter of O.P. No.2-wife but that was not allowed.

11. Having heard learned counsel for the petitioner and learned counsel for O.P. No. 2 in both the revision applications as also on perusal of the records, this Court finds that admittedly the marriage between the two parties took place about 33 years ago. The wife who is the petitioner in Cr. Revision No. 919 of 2018 admits that she was living separately and from her earning through daily wages she was doing her livelihood. On the point of her income, she has not disclosed



as to how much she earns by doing labour work. In course of evidence, she has not produced any evidence to show that her husband is having a monthly income of Rs.30,000/-.

12. The learned Principal Judge has after perusal of the pleadings of the parties recorded in paragraph '12' of his judgment under revision that "...it is admitted that petitioner was married with O.P. with assertion that after few time of her marriage with the O.P., petitioner left the house of the O.P. and she has remarried with another person and living with him from 30 years back. In this way, marriage of the petitioner with O.P. is admitted. The O.P. has not disclosed the name of the person with whom petitioner has remarried whereas petitioner has named the lady in her evidence and pleading with whom the O.P. is said to have remarried. From the evidence of the petitioner itself, it is clear that her sons and daughters are major and sons are not taking care of the petitioner and she is living with her daughter at Danapur and maintaining herself by her earning. So, it cannot be said that the petitioner is unable to maintain herself."

13. On the point of proof of income of the husband, the learned Principal Judge recorded that no proof of the fact that her husband is earning Rs.30,000/- per month has been brought on record.

14. Considering the entirety of the facts and circumstances and the materials the learned Principal Judge Family Court has fixed a sum of Rs. 2,000/- per month as maintenance. This Court finds that in the given kind of materials, taking into consideration that the petitioner



was living separately for a long time, she has major sons and daughter and she is also earning herself, the learned court below has fixed a sum of Rs.2,000/- per month which cannot be said to be unreasonable. There is no evidence of income of the husband of the petitioner, therefore, at this stage on the face of the fact that the petitioner is herself earning and is living for long time separately, in absence of declaration of her own income and there being no proof of exact income of the husband, this Court finds no reason and ground to enhance the maintenance amount payable to the petitioner. At the same time, the amount of maintenance being a meager amount, this Court finds no plausible ground to interfere with the impugned order at the instance of the petitioner in Cr. Revision No. 1217 of 2018

15. In result, this Court would not interfere with the impugned judgment. The learned Principal Judge, Family Court, Vaishali shall enforce the judgment in accordance with law.

16. Both the applications stand disposed of.

(Rajeev Ranjan Prasad, J)

SUSHMA2/-

AFR/NAFR	
CAV DATE	
Uploading Date	18.07.2022
Transmission Date	18.07.2022

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'.

