

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.725 of 2018

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

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Savita Devi wife of Jitendra Bhagat D/o Late Jawahar Bhagat Resident of Village- Laxmipur, P.S. Mahua, District Vaishali Present Address Village- Post Chechar Kulubpur P.S. Bidupur, District- Vaishali.

... .. Petitioner

Versus

1. State of Bihar
2. Jitendra Bhagat S/o Arjun Bhagat R/o Laxmipur P.S. Mahua, District Vaishali.

... .. Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Devendra Kumar, Advocate
For the State	:	Mr. Akhileshwar Dayal, APP
For the O.P. No. 2	:	Mr. Vijay Shankar Tiwari, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

8 20-07-2022 Heard learned counsel for the petitioner, learned counsel for the O.P. No. 2 and learned APP for the State

The petitioner in the present case is aggrieved by and dissatisfied with the order dated 19.02.2018 passed by learned Principal Judge, Family Court, Vaishali at Hajipur in Maintenance Case No. 158 of 2015 whereby and whereunder the learned court has rejected the claim of the petitioner demanding maintenance of Rs.10,000/- and has directed O.P. No. 2-husband to pay Rs. 3,000/- per month in favour of his only minor daughter.

Learned counsel for the petitioner has though assailed the impugned order on the ground that the petitioner has statutory right to claim maintenance under Section 125 Cr.P.C., learned counsel is unable to come out of the findings recorded by the



learned Principal Judge, Family Court, Vaishali in paragraph '11' of the impugned judgment. The learned Principal Judge has recorded that the petitioner had herself left her sasural which is evident from Exhibit '1' and for this she is responsible. She had broken her relationship with the O.P. No. 2 as a wife.

In the facts of this case where it was evident from Exhibit '1' that the applicant-wife had refused to live with her husband and she had given it in writing and had broken all relationship, she would not be entitled to seek maintenance at least under Section 125 Cr.P.C. Sub-Section (5) of Section 125 Cr.P.C. clearly stipulates that on proof that any wife is living separately by mutual consent the order of maintenance, if any, shall be cancelled. By virtue of Sub-Section (4) of Section 125 Cr.P.C. in similar circumstances, she would not be entitled to receive any allowance for the maintenance. This Court, therefore, finds no reason to interfere with that part of the impugned order which has gone against the applicant-wife.

So far as the maintenance allowance awarded to the minor daughter is concerned, the same is not under challenge by the husband of this petitioner. It is stated at the Bar by learned counsel for the petitioner that the said payment is not being made to the minor daughter but learned counsel for the husband-opposite party no. 2 in the present case submits that payments have been



made regularly save and except that payment of last few months have not been made. The statement made on behalf of the husband-O.P. No. 2 seems to be tentative in nature. Learned counsel representing him having said initially that payment has not been made only for few months seems to be lacking confidence in making statements giving much clarity on this issue.

Let learned Principal Judge, Family Court, Vaishali enforce the order against the husband-O.P. no. 2 with respect to the payment of maintenance allowance to the minor daughter. If it is found that the husband-OP No. 2 has not been paying the maintenance amount to his minor daughter for a substantial period and the outstanding is of more that 6 months as on today, he will be liable to pay the said amount with interest thereon at the rate of 12% per annum with a cost of Rs.10,000/- to his minor daughter which will be realised through the process of court by the learned court.

(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'.

