

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1233 of 2016

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

Navin Jha son of Vishwanath Jha resident of village Bhelwa, P.O. Madhuban,
PS Madhuban, District East Champaran at Motihari.

... .. Petitioner

Versus

1. The State of Bihar
2. Asha Devi wife of Navin Jha, daughter of Sri Mithilesh Jha resident of village Bhelwa, P.O. Madhuban, PS Madhuban, District East Champaran at Motihari presently residing at village Rajepur PO Rajepur, PS Rajepur, District East Champaran at Motihari.

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr. Md. Fahimuddin, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 24-11-2022 Name of three Advocates are appearing on the cause list but none of them has put their presence in this case.

The Court is left with two options. Either it should be dismissed in default living room for the petitioner to seek restoration of the case and then again keep the opposite party no. 2 involved in litigation for another year to come, the second option is to go through the records of the case and take an appropriate view of the matter on the basis of the materials available on the record.

This Court has been noticing for last about one month that in 2016 criminal revision matters almost 80-90% of the lawyers are not putting their appearance. To this Court, though it



appears that it is a discourtesy shown to the Court on the part of the learned Advocates but the Court has to perform its duty to keep faith of the litigants and the parties of this case that they will get justice one day or the other. Considering that this case relates to payment of maintenance to a neglected woman who is O.P. No. 2 and is contesting this case for her maintenance since the year 2011, this Court deems it just and proper to opt for the second option.

The petitioner is aggrieved by and dissatisfied with the order dated 25.10.2016 passed by learned Principal Judge, Family Court, East Champaran at Motihari in Maintenance Case No. 12 of 2011 by which he has directed the petitioner to make payment of Rs. 4,000/- pr month for maintenance of O.P. No. 2 by 10th day of every succeeding month with effect from 1st October, 2016.

The learned court below has also directed the petitioner to make payment of the ad interim maintenance till September, 2016 at the rate of Rs. 2,500/- only per month from the date of filing of the maintenance.

Petitioner states that he had moved this Court against the ad interim maintenance order in Cr. Revision No. 1545 of 2011 which was dismissed vide order dated 03.12.2013.



The case of the applicant-wife who is O.P. No. 2 in the present application is that she has been ousted from the matrimonial house after committing assault upon her. She claimed that she was living in her father's house along with her one son and daughter aged about 12 years and 17-½ years respectively. She asserted that she had no independent source of income whereas the petitioner has got 20.25 bighas of land, two tractors and is also engaged in business from which he earns sufficient income to maintain his wife.

The case of the applicant-wife was contested saying that the petitioner does not have any tractor and so far as the land is concerned, that is not being cultivated due to pendency of a suit in the court. He alleged that the minor son has not born out of the conjugal life between the petitioner and the O.P. No. 2. He does not deny his marriage with O.P. No. 2 and the birth of the daughter out of the wedlock.

On perusal of the impugned order, it appears that in the learned Family Court, the applicant examined altogether four witnesses whereas the husband being opposite party examined himself as DW-1. The applicant was supported by her father who deposed as PW-1, daughter (PW-3) and son (PW-4). All these witnesses have constantly stated that the opposite



party-petitioner has got one another lady in his house and he ousted the applicant, PW-3 and PW-4. The opposite party-petitioner has admitted in his deposition that he has performed a second marriage with another lady, though he claimed that he had filed a divorce suit.

The learned Family Court has noticed the evidence on the point of income and held that the opposite party was evading answer to the specific case of the applicant-wife that the opposite party had three tractors, he had a business of tent house, a battery shop and he earns Rs. 5,00,000- per annum. The learned Principal Judge has also observed that the opposite party filed a petition at a much belated stage on 15.09.2016 only to allege that PW-3 is not his son and he wanted DNA test to examine paternity of the said son. The application seeking conduct of DNA test was, thus, rejected. The Court has noticed that the opposite party was not paying any ad-interim maintenance to the applicant despite the order of the Court.

Considering these aspects of the matter and the materials on the record, the learned court below has allowed a sum of Rs. 4,000/- per month to the applicant-wife for her maintenance.

On perusal of the grounds raised in the revision



application, this Court finds that the opposite party has not raised any ground against the claim of the applicant-wife that the O.P. had about twenty bighas of land and other businesses. He has taken a bald plea that he is an unemployed person and is ready to keep his wife and daughter.

In the totality of the circumstances, this Court finds that by no stretch of imagination, it can be argued that a sum of Rs. 2,500/- awarded as ad interim maintenance to the applicant-wife and Rs. 4,000/- per month maintenance with effect from 1st October, 2016 may be said to be excessive. It is not denied that the opposite party-petitioner is an able-bodied person and he has a legal and moral duty to maintain his wife. This Court is, therefore, of the considered opinion that the impugned order needs no interference.

This Court has noticed that the petitioner has not even obeyed the interim order of the Court and he has got his wife waiting for her maintenance for last eleven years.

In the circumstances, this Court directs the learned Principal Judge, Family Court, East Champaran at Motihari to recover the entire arrears of maintenance together with a cost of Rs. 25,000/- from the petitioner by taking such action which are permissible in law expeditiously and ensure that the entire



amount reaches to the applicant-wife as early as possible.

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'.

