

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.771 of 2017

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

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Rajesh Kumar Singh @ Rajesh Kumar @ Rahul Kumar, Son of Sri Uma Shankar Singh, Resident of Village- Basudeopur, Kajra, P.S.- Kajra, District- Lakhisarai.

... .. Petitioner/s

Versus

1. Ranjana Kumari, Daughter of late Surendra Kumar Singh, Resident of Village- Karari Piparia, P.S.Piparia, District- Lakhisarai.
2. The State of Bihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Chittaranjan Sinha, Sr. Advocate Mr. R.K. Shukla, Advocate Mr. Pratyush Pratap Singh, Advocate
For the O.P. No.1	:	Mr. Om Prakash Maharaj, Advocate
For the O.P.No.2	:	Mr.Md. Fahimuddin, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 29-08-2022 Heard Mr. Chittaranjan Sinha, learned senior counsel assisted by Mr. R.K. Shukla and Mr. Prayush Pratap Singh, learned advocates for the petitioner and Mr. Om Prakash Maharaj, learned counsel for the opposite party no.1.

This revision application has been preferred for setting aside the judgment/order dated 15.06.2017 passed by learned Principal Judge, Family Court, Lakhisarai in Maintenance Case No.07/2016 whereby and whereunder the learned Principal Judge has been pleased to direct the petitioner to pay a sum of Rs.4000/- per month as maintenance to the opposite party no.1.



Submissions on behalf of the petitioner

Learned senior counsel for the petitioner submits that in this case the petitioner has disputed his marriage with the opposite party no.1 as according to him no valid marriage of the petitioner with the opposite party no.1 has taken place, therefore she cannot claim herself a legally wedded wife of the petitioner. It is brought to the notice of this Court that in the year 2019 the petitioner has filed a suit giving rise to matrimonial suit no.15 of 2019 for declaring his status as 'unmarried' and to hold that the alleged marriage between the petitioner and the opposite party no.1 is not a valid marriage. The said suit is pending.

It is then submitted that in any case the finding of the learned Principal Judge, Family Court that the petitioner has got sufficient income from his paternal properties of 12 bighas of land is not borne out of the records. He claims that at the relevant time the petitioner was engaged in preparation for competitive examinations and was doing coaching at Delhi. At this stage when this Court called upon the learned counsel for the petitioner to say as to what the petitioner is doing, the Court has been informed though vaguely that the petitioner is engaged in some contractual work and is earning out of that. The establishment in which the petitioner is engaged and his income



out of that have not been disclosed to this Court despite repeated queries made from learned counsel for the petitioner.

Mr. Chittaranjan Sinha, learned senior counsel for the petitioner submits that the findings recorded by the learned Principal Judge, Family Court, Lakhisarai is not sustainable and the same be set aside by this Court. The petitioner has filed an interlocutory application giving rise to I.A.No.3085/2018 calling upon this Court to allow him to place certain documents and according to him those documents could not be produced by him in the learned court below inadvertently.

Submissions of the O.P.No.1

On the other hand, Mr. Om Prakash Maharaj, learned counsel for the opposite party no.1 has opposed this application on various grounds. Learned counsel submits that a proceeding under Section 125 Cr.P.C. is a summary proceeding. This provision has been brought in the statute book to take care of the neglected women and children. In this case the marriage between the petitioner and opposite party no.1 was a love marriage when both of them were engaged temporarily in Bharat Shaksharta Mission in the year 2011. They came in contact with each other during this period and the marriage was solemnized. Learned counsel submits that out of the said



wedlock the opposite party no.1 had given birth to a child as well, who unfortunately died later on.

It is further submitted that the learned court below has dealt with the objection with regard to the validity of the marriage in summary manner on the basis of the materials on the record and no fault may be found with the same. It is submitted that the maintenance case was brought by the opposite party no.1 in the year 2016 and it was decided on 15th of June, 2017. About two years thereafter in order to avoid the liabilities flowing from the order dated 15th of June, 2017 the present petitioner has filed the matrimonial suit seeking a declaration that he is unmarried. In the said matrimonial suit the opposite party no.1 has already appeared on 23.12.2019, however the case is still pending as the petitioner has filed an application seeking amendment of the matrimonial suit.

Learned counsel submits that the petitioner himself admits that in the year 2011-12 he was engaged in Bharat Shaksharta Mission but thereafter he claims that he had gone to pursue his competitive examination and in this connection he was doing coaching but in course of his evidence when he was called upon to produce the identity card of any coaching-institute of Delhi in which he was said to be studying, he could



not produce the same. He could not produce any other material to demonstrate that he was engaged in studies or was appearing in competitive examination. It is submitted that so far as the evidence as to his ancestral properties are concerned, the learned court below has rightly found from the evidences of the witnesses of the petitioner that the petitioner has got 12 bighas of land. It is submitted that even if it is assumed for a moment that the petitioner was pursuing his studies at Delhi and he had no independent income, a reasonable person would come to a conclusion that he comes from a well to do family having sufficient means by way of properties and is able to maintain himself at Delhi from the income derived from the ancestral properties. The O.P. No.1 being his wife is, thus required to be maintained in equal status.

Learned counsel submits that in the case of ***Rajnesh Vs. Neha & Ors. reported in (2021) 2 SCC 324***, the Hon'ble Supreme Court has held that both the parties are liable to file their affidavit disclosing their complete movable and immovable properties as also other details and it has further been held that any false statement by way of pleading would invite prosecution action. In this case it would appear that the petitioner has been throughout trying to withheld his income and details of his



properties from the Court and even today he is not disclosing the name of the establishment in which he is working. It is further an admitted position that he is engaged on contractual basis and has got income out of that. Non-disclosure of the same in this Court would only be liable to result in drawing of an adverse inference against the petitioner.

Lastly it is submitted that by the impugned judgment the learned Principal Judge, Family Court has allowed only a sum of Rs.4000/- per month for the opposite party no.1. It is submitted that now a days even an unskilled labourer earns about Rs.400/- per day, therefore there is no reason as to why in the case of the petitioner who is admittedly working and earning out of his contractual work, this Court should interfere with the impugned judgment. After all the spirit of the legislation is to help the poor neglected women who has no independent source of income. Learned counsel has pointed out that during the year 2011-12 though the petitioner was engaged in the Bharat Shaksharta Mission but that was a temporary work and the petitioner was disengaged very soon thereafter. The learned court below has, thus, rightly found that the opposite party no.1 has no other source of income.



Interim order obtained by misleading the Court

Learned counsel for the opposite party no.1 has brought to the notice of this Court that the petitioner obtained the interim order dated 02.11.2018 by misrepresentation and according to him it was in fact a fraud played upon the Court. On the said date when the case was taken up by the learned predecessor Bench of this Court, Hon'ble bench was given to understand by way of submission that a distress warrant has been issued against the petitioner which was not a correct fact as there was no distress warrant on that date against the petitioner. Taking note of the said submission the learned predecessor Bench directed stay of the same till further orders.

Learned counsel submits that later on when in course of execution of the impugned judgment a distress warrant was issued by the learned Principal Judge, Family Court, Lakhisarai on 31.01.2020, a petition was filed on behalf of the present petitioner citing the order of this Court of the year 2018 and a submission was made that the distress warrant issued against the petitioner by virtue of the order dated 31.01.2020 be recalled. It was argued that the distress warrant has been issued in violation of the order of the Hon'ble High Court which was again a completely misleading submission and the petitioner was



successful in getting a recall of the distress warrant. In this manner the petitioner has not paid a single penny to the opposite party no.1 till date.

In response to the last submission of learned counsel for the opposite party no.1 as regards the order dated 02.11.2018 passed by this Court, Mr. Chittaranjan Sinha, learned senior counsel for the petitioner submits that there seems to be a mistake in communication. He has, however, no answer to the conduct of the petitioner as to why it was not brought to the notice of this Court within a reasonable time and why the advantage was sought to be taken and was virtually taken by calling upon the learned Principal Judge, Family Court, Lakhisarai to recall the order dated 31.01.2020 on the strength of the order of this Court dated 02.11.2018, learned senior counsel has no reply to the same and admits that this cannot be satisfactorily explained.

Consideration

Having regard to the submissions noted hereinabove and the materials available on the record, this Court finds that in this case the dispute raised with regard to the validity of the marriage has been summarily dealt with by the learned Principal Judge, Family Court, Lakhisarai. The prayer of the petitioner to



deal with this issue by taking on record certain more documents which the petitioner had not filed in the learned court below would not be appropriate for this Court sitting in its revisional jurisdiction. There is one more reason for refraining itself from going into such issue and that is that a matrimonial suit bearing no.15 of 2019 is already pending in the learned court below. This Court, therefore, would not take upon itself to decide such issues which may be involved in the suit in its revisional jurisdiction. At the same time, the Court finds no reason to interfere with the order of the learned Principal Judge, Family Court, Lakhisarai in the present case on this score.

As regards the quantum of maintenance, this Court finds that even though in the learned court below the petitioner took a plea that he was preparing for competitive examination staying at Delhi, he had not brought any evidence even to prima-facie satisfy the Court as to the correctness of his plea. No identity card of any educational institution or proof of appearing in competitive examination during that period has been adduced in evidence. On the other hand the applicant and her witnesses claimed that the petitioner had an income of Rs.40,000-45,000 as also that he had got at least 12 bighas of ancestral land. This Court finds that the learned court below has



allowed a maintenance allowance of Rs.4000/- only which is a meagre amount and would hardly come to Rs.130/- per day. In the present days economic condition it is difficult to understand that a lady having no independent source of income would survive with a sum of Rs.130/- per day. This Court has been told that she has already lost her both parents and has no one to look after her.

In course of hearing, this Court has further come to know from the learned counsel for the petitioner that this petitioner is engaged in some contractual work and is earning out of that. This Court would certainly draw an adverse inference from the fact that the learned counsel for the petitioner is not disclosing the name of the establishment in which the petitioner is working and his total income from such contractual work. In any view of the matter, in the given facts and circumstances and the materials on the record, this Court finds no reason to interfere with the impugned judgment directing payment of a sum of Rs.4000/- per month only to the opposite party no.1.

The revision application has no merit and it is being dismissed accordingly.

Since this Court has been told that the petitioner has



not been paid a single penny even though there was no stay of the impugned judgment and in course of execution of the impugned judgment when the distress warrant was issued against the petitioner the same was got recalled on the strength of the order of this Court passed on 02.11.2018, this Court is of the considered opinion that the petitioner has been instrumental in keeping the impugned order virtually stayed and has derived the fruit of that by not paying any money to the opposite party no.1 but at the same time compelled her to contest the litigation all these years. The interim order dated 02.11.2018 was obtained on a completely false submission. Taking note of this, this Court imposes a cost of Rs.25,000/- by way of cost of litigation upon the petitioner. Let the same be paid to the opposite party no.1 within a period of thirty days from today.

Now coming to the order dated 02.11.2018, this Court finds that the opposite party no.1 has made out a prima-facie case for taking a view that on 02.11.2018 a completely false and wrong submission was made in this Court saying that a distress warrant had been issued against the petitioner. Because of that submission the learned predecessor Bench directed stay of the distress warrant. No step was taken thereafter to bring it to the notice of the Court that the said submission was not correct



rather this Court is surprised that on 31.01.2020 when a distress warrant was issued by the learned Principal Judge, Family Court, Lakhisarai in course of execution of the impugned judgment, a plea was taken that there is an interim order of this Court and on that strength a recall petition was filed and the Court was given to understand that the distress warrant has been wrongly issued. This way the distress warrant was got recalled and the impugned judgment remained pending as in absence of the distress warrant the execution procedure lost its teeth to move against the petitioner.

In the circumstances stated hereinabove, while dismissing this revision application, this Court issues notice to the petitioner calling upon him to show cause as to why a proceeding for criminal contempt be not directed to be registered against him. Let such show cause be filed within a period of four weeks from today.

List this matter with the show cause under the heading 'For Orders' on 27.09.2022.

(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'.

