

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1054 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Rohtas

Raju Kumar Mishra Son of Kalendra Mishra Resident of Village - Indrath,
P.O.- Kastar, P.S. - Bikramganj, District - Rohtas, at present Batalion No.
15619370Y, CO 4 Guard and Fast Rajput, C/O 56 APO

... .. Petitioner

Versus

1. Rinki Devi @ Rinki Mishra Wife of Raju Kumar Mishra D/o- Ram Naresh Upadhyay, Resident of Village - Indrath, P.O.- Kastar, P.S. - Bikramganj, District - Rohtas, at present R/O Village- Mangraon, P.S.- Kuchhwa, District - Rohtas.
2. Rishabh Raj Son of Raju Kumar Mishra Resident of Village - Indrath, P.O.- Kastar, P.S. - Bikramganj, District - Rohtas, at present R/O Village- Mangraon, P.S.- Kuchhwa, District - Rohtas.

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 11-10-2022 No one appears for the petitioner.

Considering that this revision application relates to the matter of maintenance to a neglected woman and minor child, this Court has taken up the revision application for consideration on its own merit.

The petitioner in the present case is seeking setting aside of the impugned judgment dated 05.04.2019 passed in Maintenance Case No. 111 of 2016 by learned Principal Judge, Family Court, Rohtas, Sasaram. The learned family court has been pleased to allow a maintenance amount of Rs.15,000/- per month to the applicant-wife and the minor son of the petitioner



and the petitioner has been directed to pay the same.

On perusal of the impugned judgment, it appears that the marriage between the petitioner and the applicant-wife was solemnised on 28.04.2007. Out of the said wedlock, a son was born but thereafter due to some matrimonial discord between the husband and wife, the wife alleged that she has been neglected by her husband. It is stated that the husband-petitioner is serving in Army and his monthly salary is not less than Rs.42,000/-. He has also got 5 bighas of fertile cultivable land from which he is earning annual income of Rs.1 lakh.

It appears from the impugned order that in the court below, notice was issued to the husband-petitioner but he did not appear. Thereafter, a substituted notice was also served by publishing the same in Gazette, still the husband did not appear and the court was constrained to fix the case for ex-parte hearing.

The applicant-wife supported her case and she brought two other witnesses who deposed that the applicant and her minor son have been neglected by this petitioner. They have also stated that the petitioner serves in Army and has a salary of Rs.52,000/- per month.

The learned court below has after referring the



materials available on the record allowed a maintenance amount of Rs.15,000/- per month to the applicant-wife and Rs.5,000/- to the minor son of the petitioner.

In the revision application, the only ground raised by the petitioner is that the impugned judgment is an ex-parte judgment and that the petitioner could not appear within time and further that his petition for recall of the ex-parte order was rejected.

In the revision application, there is no denial of marriage and further there is no ground that the applicant-wife has got any independent income to maintain herself. The petitioner does not deny that he is serving in the Army and has got sufficient income to maintain his wife and minor son.

In the facts of the present case where there is no denial of marriage and the only ground is that of its being an ex-parte judgment, this Court finds that on this ground alone the impugned judgment is not fit to be set aside. The petitioner nowhere states as a ground that he had not received the notices issued by the learned court below.

This Court, therefore, finds that firstly he neglected the case by not putting his appearance on service of notice and thereafter he again neglected the proceeding despite there being



a Gazette notification of the notice. The learned court below has allowed a total sum of Rs. 20,000/- on account of maintenance to the applicant-wife and the minor son which would come about 40% of the salary of the petitioner at the relevant time.

Recently in the case of **Anju Garg and Another Vs. Deepak Kumar Garg** reported in **2022 SCC Online SC 1314**, the Hon'ble Supreme Court has observed in paragraph '10' as under:-

“10. This Court had made the above observations as the Court felt that the Family Court in the said case had conducted the proceedings without being alive to the objects and reasons, and the spirit of the provisions under Section 125 of the Code. Such an impression has also been gathered by this Court in the case on hand. The Family Court had disregarded the basic canon of law that it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children. The husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds mentioned in the statute. In ***Chaturbhuj v. Sita Bai reported in (2008) 2 SCC 316***, it has been held that the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing, and shelter by a speedy remedy. As settled by this Court, Section 125 Cr.P.C. is a measure of social justice and is specially enacted to protect women and children. It



also falls within the Constitutional sweep of Article 15(3), reinforced by Article 39 of the Constitution of India.”

The law being well settled and the responsibility not denied by the petitioner, this Court finds no reason to interfere with the impugned judgment.

Let the Principal Judge, Family Court, Rohtas, Sasaram execute the impugned judgment as expeditiously as possible and in case it is found that the petitioner is not paying any maintenance to his wife and minor son during all these periods despite their being a judgment of the learned court below, the petitioner shall be liable to pay an additional sum of Rs.25,000/- by way of cost for keeping his wife and minor son engaged in litigation for over six years since the filing of the application under Section 125 CrPC.

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'.

