

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.911 of 2016

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

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Mushtaque Alam @ Mushtaque son of Taslimuddin @ Taslim, resident of Village- Kutchhary Basti, Padampur, Police Station Dighalbank, District- Kishanganj.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Samerun Nisha wife of Mushtaque Alam alias Mushtaque
3. Muskan daughter of Mushtaque Alam Both resident of Village- Kutchhary Basti, Padampur, Police- Station- Bahadurganj District- Kishanganj, at present Khauqahtola Birnia P.S. Bahadurganj, Post Office Shamsar, Hat, District Kishanganj.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.
For the State : Mr.Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 10-11-2022 No one appears on behalf of the petitioner.

Considering that this revision application is of the year 2016, this Court has considered it on its own merit and on the basis of the materials available on the record.

Petitioner is aggrieved by and dissatisfied with the order dated 19.07.2016 passed in Maintenance Case No.97 of 2015 by the learned Principal Judge, Family Court, Kishanganj.

By the impugned judgment, the learned Principal Judge, Family Court has been pleased to award a sum of Rs.4,000/- per month as maintenance to the applicant-wife and her minor daughter.



On perusal of the impugned judgment, it appears that for purpose of awarding the maintenance, the learned Principal Judge, Family Court has acted on the principle of best judgment award by taking that the husband of the petitioner works as a labourer.

In the revision application preferred before this Court the only ground taken on behalf of the petitioner is that he is a daily labourer and has no landed property as claimed by the opposite party no.2.

This Court finds that in the case of **Anju Garg and Another Vs. Deepak Kumar Garg reported in 2022 SCC Online SC 1314** when a submission was made on behalf of the appellant that the husband had no income, the Hon'ble Supreme Court held that an able-bodied person has besides there being legal duty there is also a moral duty to maintain his wife by doing physical labour. The observations of the Hon'ble Supreme Court in paragraph '10' of the judgment are quoted hereunder for a ready reference:-

“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.”

In the facts and circumstances of the present case, even if it is assumed that the petitioner works as a daily labourer, there is no reason to interfere with the quantum of maintenance which is hardly Rs.2,000/- per person. The consolidated amount of Rs.4,000/- to the applicant-wife and her minor daughter cannot be said to be excessive. This Court would, therefore, not interfere with the impugned judgment.

This revision application is dismissed.

It is not known whether the petitioner is paying the maintenance amount to the applicant-wife and her minor daughter or not.

In case, the petitioner is not paying the maintenance



amount so far and has avoided the payment in the name of pendency of the revision application before this Court, the learned Principal Judge, Family Court, Kishanganj is directed to recover the entire outstanding amount together with a cost of Rs.25,000/- from the petitioner and pay the same to the applicant-wife and her minor daughter as expeditiously as possible.

(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'.

