

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1128 of 2016

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

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Rabindra Rai Son of Ram Swaroop Rai, Resident of Village- Majuraha,
Police Station- Turkauliya, District- East Champaran.

... .. Petitioner

Versus

Nirmala Devi Daughter of Nathuni Rai, wife of Mukhtar Rai, resident of
village- Ratanpur Tola Khairwa, Police Station- Pipra Kothi, District- East
Champaran.

... .. Opposite Party

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 15-11-2022 No one appears for the petitioner to press this revision
application.

Considering that the matter relates to payment of
maintenance to a neglected wife and the revision application has
remained pending for six years and at this stage there is no
representation on behalf of the petitioner, this Court deems it
just and proper to dispose of the revision application on its own
merit.

Petitioner is aggrieved by and dissatisfied with the
judgment dated 28.09.2016 passed by learned Principal Judge,
Family Court, East Champaran at Motihari on an application
under Section 127 Cr.P.C. filed on behalf of the petitioner.

From the averments made in the impugned judgment



itself it appears that earlier at the instance of the applicant-wife the learned Principal Judge has passed a judgment dated 16.06.2009 directing the husband to pay a sum of Rs.1600/- to the applicant-wife for her maintenance with effect from 14.02.2006 i.e the date of application under Section 125 Cr.P.C.

By filing the application under Section 127 Cr.P.C., the husband-petitioner contended that the applicant-wife has performed a second marriage with one Mokhtar Rai without seeking divorce from the petitioner. It was alleged that she had solemnized marriage in Shemeshwar Nath Sheo Mandir, Areraj and thereby she had committed an offence punishable under Section 494 I.P.C. It was contended that the applicant-wife is not entitled for maintenance from the petitioner.

The stand of the petitioner was contested by the applicant-wife. She denied to have performed the second marriage with Mokhtar Rai. She contended that the allegations are false, concocted and baseless and this allegation has been made only to avoid the payment of maintenance allowance. It is submitted that a huge amount of maintenance is due against her husband.

The husband-petitioner examined altogether six witnesses and filed some documents in which Exhibit-2 is the



certified copy of the order-sheet dated 08.02.2012 passed by the learned Judicial Magistrate in Trial No.4390. Exhibit-1 is the certified copy of Complaint Case No.C-2150 of 2010 and Exhibit-3 is the receipt of marriage proof issued by Sumeshwar Nath Shiv Mandir. On the other hand, the applicant-wife produced three witnesses.

The learned trial court proceeded to determine as to whether the petition under Section 127 Cr.P.C. is fit to be allowed. The learned trial court has discussed the evidence of the husband-petitioner and the witnesses who supported his case. In his cross-examination, the petitioner stated that he had not filed any case against Nirmala Devi alleging performance of second marriage with Mokhtar Rai. The witness PW-1 was also cross-examined. He has stated that the second marriage of Nirmala Devi was not performed in his presence and he cannot produce any document of second marriage. The learned trial court held that this witness is not a reliable witness.

Similarly PW-2, PW-3, PW-4 and PW-5, in course of their cross-examination either stated that they cannot say whether the second marriage was performed or not or that they cannot identify the second husband of Nirmala Devi. The applicant's witness withstood the taste of cross-examination.



The learned trial court has perused Exhibit-1, Exhibit-2 and Exhibit-3. Exhibit-1 is the certified copy of the complaint petition in which the present petitioner is the complainant, Exhibit-2 is the certified copy of the order-sheet passed in the said case in which the court below has not found prima-facie case against Mokhtar Rai and Nathuni Rai and the court below did not issue any summon against them.

This Court having perused the entire materials as discussed hereinabove, in the considered opinion that no illegality or infirmity may be found with the impugned judgment. The learned court has discussed the evidences adduced on behalf of the parties as have been noticed by this Court hereinabove and rightly appreciated that.

In result, this revision application is dismissed.

The learned Principal Judge, Family Court, East Champaran at Motihari is directed to proceed to enforce the judgment dated 16.06.2009 and realize the entire outstanding/arrears of maintenance from the petitioner and ensure payment of the same to the applicant-wife as expeditiously as possible.

If it is found that the petitioner has not paid the maintenance amount for all these years and in the name of



pendency of the revision application he has deprived his wife from getting the maintenance, the petitioner shall be liable to pay a cost of Rs.25,000/- to his wife which shall also be realized by the learned court below.

(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'.

