

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.286 of 2023

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

SHAMBHU PRASAD YADAV SON OF LATE MOTI LAL YADAV
Resident of village - Morsanda, P.S. - Falka, Distt. - Katihar

... .. Petitioner/s

Versus

1. The State of Bihar
2. NIRMALA DEVI WIFE OF SHAMBHU PRASAD YADAV, D/O
YADUNANDAN YADAV Resident of village - Dhusar, P.S. - Tikapatti,
Distt. - Purnea

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ajit Kumar Singh, Adv
For the Respondent/s : Ms. Nirmala Kumari

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT/ORDER

3/ **08-08-2023**

The present revision application has been preferred by the petitioner being aggrieved by the judgment and order dated 13.10.2022 passed in Maintenance Case No. 443/2017 by Additional Principal Judge, Family Court, Katihar whereby the maintenance amount has been enhanced on a petition filed by wife (OP No.2) under Section 127 CrPC and the petitioner has been directed to pay a sum of Rs. 1000/- per month from 01.01.2018 to 31.12.2020 and to pay Rs. 2000/- per month from 01.01.2021 to 30.09.2022 and further directed to pay Rs. 3000/- per month as enhanced maintenance from 01.10.2022. The total amount arrived for all the aforesaid period is to be paid in four instalments and the amount already paid to the Opposite Party



No. 2 is to be deducted from the total amount.

2. The brief facts of the present case is that the marriage between petitioner and OP No.2 was solemnized in the year 1979 in accordance with Hindu customs and rites. The dispute arose when the petitioner solemnized second marriage in the year 1983 and thereafter the petitioner started torturing and harassing OP No.2 physically as well as mentally and also demanded dowry. In the year 1985, she was driven out from her matrimonial home. It is not in dispute that the petitioner was working as technician in Bokaro Steel Plant since 1985 and was drawing handsome salary of Rs. 37,000/- per month.

3. Learned counsel for the petitioner submits that there was no cordial relationship between the petitioner and OP No.2 and thereafter she herself refused to live with the petitioner. In the year 1991, on a Maintenance Case No. 56/1991 filed by OP No.2 under Section 125 CrPC, the petitioner *vide* order dated 11.10.1993 was directed to pay Rs. 400/- per month as maintenance which according to the petitioner is being paid regularly till date. The petitioner superannuated from service on 31.08.2012 and his monthly pension was fixed at Rs. 1652/- per month. It has lastly been submitted that by the order impugned enhancement of maintenance has been allowed with



retrospective effect which is not permissible.

4. I have heard learned counsel for the petitioner and perused the materials on record.

5. OP No.2 has filed a petition under Section 127 CrPC before the learned Family Court in the year 2017 for enhancement of maintenance to the tune of Rs. 15,000/- and also Rs. 50,000/- lump sum as litigation cost. Two witnesses were examined from the side of OP No.2/wife. One witness was examined from the side of petitioner i.e., petitioner himself. OP No.2/wife in her deposition has stated that she has been receiving a sum of Rs. 400/- per month as maintenance but due to rising cost of commodities and other materials, it was difficult for her to survive. She has also stated that apart from the pension, there is other income of her husband. He is having chunk of lands also whereas OP No.2 does not have any source of income and she does not even have a home where she could live in. In her cross-examination, she demanded a sum of Rs. 10,000/- as enhanced maintenance.

6. From perusal of the impugned order and the material on record, petitioner was examined as DW-1 where he has accepted that he retired as technician from Bokaro Steel Plant and in paragraph-3 of his cross-examination, he accepted



that he has performed second marriage in 1986. In paragraph-5 of the same, he stated that he would not submit last pay drawn certificate and at that point of time, he was getting Rs. 35,000/- to Rs. 40,000/- per month. He has denied that he received a sum of Rs. 20,000/- as pension and accepted that at the time of retirement he got Rs. 7 Lacs *lump sum* amount and denied that Rs. 25 Lacs was given to him. In para-14, the petitioner stated that he would not submit the details of money received by him at the time of retirement. However, he could submit his pension paper.

7. Annexure-5 of this petition is pension sanction order issued under the Employees Pension Scheme (EPS) of Employees Provident Fund Organization (EPFO) in which the Assistant Provident Fund Commissioner (Pension) has fixed the monthly pension of the petitioner at Rs. 1652/-. It appears that the petitioner was in service of Public Sector Undertaking i.e., Bokaro Steel Plant where service of petitioner may not be pensionable and the said organization may be having other beneficial scheme including contributory provident fund etc., for its employees. The petitioner must have got a handsome amount from his organization at the time of retirement but he has refused to produce the documents showing the amount



which he has received on the date of retirement. Pension through EPF under Employees Provident Fund Scheme is a social security measure under the statute which is over and above the amount received by the petitioner from his employer. It is not disputed that in a meagre amount of Rs. 400/- which was awarded as maintenance in 1993 nobody can survive. Taking into consideration the rate of inflation and price of essential commodities which are going high day by day, the learned Family Court has enhanced the maintenance amount from Rs. 400/- to Rs. 1000/- per month from 01.01.2018 to 31.12.2020 i.e., reasonable enhancement of Rs. 600/- for a period of about two years. Taking into consideration further rise of prices of commodities due to inflation the court has directed the petitioner to pay Rs. 2000/- per month from 01.01.2021 to 30.09.2022 i.e., enhancement of Rs. 1000/- w.e.f 01.01.2021 to 30.09.2022 and from the date of order which was passed on 13.10.2022, the Court has directed the petitioner to pay a sum of Rs. 3000/- per month.

8. The learned Family Court has enhanced the compensation/maintenance in slabs taking into account the rate of inflation due to increase in prices of essential commodities which shows the proper application of mind by the Family



Court. The contention of the petitioner that enhancement cannot be with retrospective effect is not tenable inasmuch as the learned court has enhanced compensation from the date of 01.01.2018 to the extent of Rs. 600/- whereas application for enhancement was filed by OP No.2/wife in 2017.

9. The Hon’ble Apex Court in the case of *Sau Suman Narayan Niphade v. Narayan Sitaram Niphade* reported in *1995 Supp 4 SCC 243* has held that the enhanced maintenance whether can be allowed from the date of application or from the date of order is within the discretion of the Court.

10. It is not in dispute that OP No. 2 is the first wife and the first wife has got the first right of maintenance. Accordingly, I do not find any cogent reason to interfere with the order passed by the Family Court, Katihar in Maintenance Case No. 443/2017. Accordingly, the instant petition is, hereby, dismissed.

(Anil Kumar Sinha, J)

Md. Perwez Alam

AFR/NAFR	AFR
CAV DATE	N/A
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