

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.22 of 2019

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

Jyoti Raj Daughter of Sri Umesh Prasad Sah Wife of Alok Bharti, resident of
Indu Sadan, Lohsari Road, Vill-Singhray Mahua, P.S-Mahua, Distt.-Vaishali.

... .. Petitioner

Versus

1. The State of Bihar
2. Alok Bharti, Son of Anup Lal Sah, Vill-Neemchak, P.S-Tajpur, Distt.-
Samastipur presently residing at Building No.9, Flat No.07, MSEB Colony,
National Park, Boriwali, Mumbai-400066

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Nikhil Kumar Agrawal, Advocate Ms. Aditi Hansaria, Advocate Mr. Yash Sahay, Advocate
For the Respondent/s	:	Mr. Akhileshwar Dayal, APP
For the R. No.2	:	Mr. Ankit Katriar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 22-12-2023

This revision application has been preferred for setting aside the order dated 11.04.2018 (hereinafter referred to as the 'impugned order' or 'impugned judgment') passed by the learned Principal Judge, Family Court, Vaishali at Hajipur in Maintenance Case No. 153 of 2016. By the impugned order, the learned Family Court has been pleased to grant maintenance of a sum of Rs. 10,000/- in total, being Rs. 5,000/- per month for maintenance of the petitioner and Rs. 5,000/- per month for maintenance and education of her minor son. The Opposite Party No.2 has been directed to pay the maintenance per month



after deducting the amount, if any, which he has been paying at any other forum, from the date of filing of the application.

Brief facts of the case

2. Petitioner was married to Opposite Party No.2 on 29.11.2012 in accordance with the Hindu rites and customs. It is alleged that sometimes after her marriage, the behavior of the husband changed and he started committing atrocities upon the petitioner. The petitioner gave birth to a child but during the pregnancy period, because her husband was not taking care of her, she returned to her *naihar*. It is alleged that after birth of a male child on 09.11.2013, the parents of the petitioner took her to Mumbai to live with her husband but her husband was assaulting her, therefore, ultimately she was compelled to leave the residence of her husband at Mumbai and on 4th of June 2015, she returned to her *naihar* along with her male child. She alleged that her husband never took care of her and the male child and he neglected them. The petitioner claimed that she was facing financial hardship in maintaining herself and her son.

3. On the point of income, it is the case of the petitioner that her husband was earning a monthly salary of Rs. 70,000/- from his employment in a public sector undertaking, he has income from house rent and other properties. According to



the petitioner, her husband has a monthly income of about Rs. 1,50,000/-. In the above background, the petitioner filed an application under Section 125 of the Code of Criminal Procedure (Cr.P.C.) in the learned Family Court for maintenance.

4. The Opposite Party No. 2 appeared in the Family Court and opposed the application seeking maintenance. He alleged that the petitioner is of weak mind, indisciplined and selfish. He alleged that his wife was quarrelsome and assaulting him. The Opposite Party No.2 admitted birth of son from the wedlock but claimed that he was always providing monetary help to the petitioner. About his income, he came out with a case that he was working as an assistant engineer under Maharashtra Electricity Board and he was getting a salary of only Rs. 25,000/- per month. He denied the claim of his wife that his salary income was Rs. 80,000/- per month. Further case of Opposite Party No.2 was that his wife is well educated and presently she was working in a private firm. He also submitted that the cost of living in Mumbai is very high so he was unable to provide any maintenance to the petitioner even as she had left the house of the Opposite Party No.2 without any justifiable reason.



5. The learned Family Court framed an issue as to whether the petitioner is unable to maintain herself and the opposite party, who is having sufficient means, is neglecting his wife.

6. On perusal of the impugned judgment, it appears that both the parties have examined witnesses in support of their respective case. The marriage between the parties and birth of the son from the said wedlock are the admitted facts. In their deposition, both the parties made allegations against each other. On point of income, the Opposite Party No.2 produced his salary slip which has been proved as Exhibit '1' (refer paragraph 14 of the impugned judgment). Exhibit '1' shows that the O.P. No.2 was at the relevant time getting gross salary of Rs. 63,949/- out of which a sum of Rs. 31,346/- per month was being deducted against his loan and he got only Rs. 32,603/- as salary in his hand. Altogether five witnesses, including the petitioner, were examined on behalf of the petitioner and the O.P. No.2 himself, his father and mother were examined in support of his case. The learned Family Court has briefly discussed the deposition of witnesses in the impugned judgment.

7. Upon consideration of the pleadings and the



evidences brought on the record, the learned Family Court held that the relationship between the parties is admitted and there is an allegation that the petitioner had been ousted from the residential house of the husband without any justifiable cause and behaviour. It has also been taken note of that she is unable to maintain herself and is entitled to get maintenance. The learned Family Court took into account the salary income of the Opposite Party No.2 in between Rs. 60,000/- and Rs. 70,000/-. About the rent income, the learned Family Court held that the petitioner had not provided any document to show the shops and godown and other properties of the Opposite Party No.2 as she had simply filed the salary slip of the Opposite Party No.2. It has also been noticed that the Opposite Party No.2 was paying Rs. 10,000/- to the petitioner by order of this court in miscellaneous case. Thus, in ultimate analysis, the Family Court has granted Rs. 10,000/- per month as maintenance i.e. Rs. 5,000/- to the petitioner and Rs. 5,000/- to her minor son.

Submissions on behalf of the petitioner

8. Mr. Nikhil Kumar Agarwal, learned counsel for the petitioner, has assailed the impugned judgment on the quantum of maintenance. It is submitted that the learned Family Court has taken into consideration the net take home salary of the



husband-O.P. No.2 which is not the correct way in which maintenance is to be fixed. Referring to paragraph '18' of the impugned judgment, learned counsel has submitted that a bare perusal of the same would show that the gross salary of the O.P. No.2, at the relevant time, was Rs. 63,949/- and out of this, Rs. 31,346/- was being deducted. In the deduction column of the salary slip (Exhibit '1'), a sum of Rs. 16,178/- is being shown deductible on account of MSEB Emp CCSoc Mumbai. It is a loan availed by the Opposite Party No.2 and the deduction is made against the refund of loan.

9. Learned counsel submits that in the case of **Dr. Kulbhushan Kunwar Vs. Smt. Raj Kumari and Anr.** reported in **AIR 1971 SC 234** which has been followed by the Hon'ble Punjab and Haryana Court in the case of **Seema and Anr. Vs. Gourav Juneja** reported in **2018 SCC OnLine P&H 3045** and again followed by the Hon'ble Delhi High Court in **Nitin Sharma Vs. Sunita Sharma and Others** reported in **2021 SCC OnLine Del 694**, the principles for arriving at a just and proper conclusion to fix the quantum of maintenance have been provided. Learned counsel submits that it has been categorically held by the Hon'ble Supreme Court in **Dr. Kulbhushan Kunwar (supra)**, the Hon'ble High Courts of Punjab and



Haryana and Delhi that while calculating the quantum of maintenance, the income has to be ascertained keeping in mind that the deductions only towards income tax and compulsory contributions like G.P.F., E.P.F., etc. are permitted and no deductions towards house rent, electric charges, repayment of loan, LIC payments, etc. are permitted. It is submitted that as regards the claim of the Opposite Party No.2 that the petitioner was working in a private firm, in course of his evidence he could not take even name of the firm in which his wife was allegedly working. At the same time, the wife-petitioner has denied that she was working in any firm. Referring to the judgment of the Hon'ble Supreme Court in the case of **Sunita Kachwaha and Ors. vs. Anil Kachwaha** reported in (2014) 16 SCC 715, learned counsel submits that when no proof of earning of the petitioner was placed on the record before the learned court below, a mere bald statement of the Opposite Party No.2, that his wife was earning, cannot be a ground to provide lesser amount of maintenance. Thus, the learned Family Court has rightly not accepted the case of the O.P. No.2 that his wife was employed in a firm. It is submitted that the learned Family Court has failed to appreciate the materials available on the record in the light of the judicial pronouncements on the subject,



which has resulted in fixation of maintenance in lower side.

Submissions on behalf of the Opposite Party No.2

10. Mr. Ankit Katriyar, learned counsel for the Opposite Party No.2, has submitted that the Opposite Party No.2 is living at Mumbai with his parents. The cost of living at Mumbai is in higher side and his parents are not having any independent source of income, therefore, the Opposite Party No.2 is obliged to look after his parents also. It is submitted that in case of **Rajnesh Vs. Neha and Anr.** reported in (2021) 2 SCC 324, the Hon'ble Supreme Court has categorically held that the expenses required to be made on the parents are also required to be considered.

11. Learned counsel further submits that the Opposite Party No.2 is facing criminal prosecution in Mahua P.S. Case No. 294 of 2016, registered under Section 498A of the Indian Penal Code. He has been granted privilege of anticipatory bail on the condition that he would pay a sum of Rs. 10,000/- per month to the petitioner and he would appear regularly in the learned trial court. Thus, in order to attend the trial, the O.P. No.2 has to appear regularly at Hajipur, Vaishali from Mumbai and he, being in an essential service, has to take leave for a short period and then he takes his journey through air, which is also



causing a lot of expenses. It is submitted that in such circumstance, the formula explained in the judgment of the Hon'ble Delhi High Court, if applied, would cause immense hardship to Opposite Party No.2. Learned counsel has relied upon a judgment of the Hon'ble Supreme Court in the case of **Bharat Petroleum Corporation vs. N.R. Vairamani and Anr.** reported in **(2004) 8 SCC 579** to submit that judgment of the Court would not be cited like an Euclid's Theorem as a slight change in the facts of the case would make a sea difference in the opinion of the Court. On these submissions, the learned counsel has defended the impugned judgment.

Consideration

12. Having heard learned counsel for the parties and on perusal of the records, this Court finds that the relationship between the parties is admitted. The Opposite Party No.2 has not challenged the impugned judgment on any ground. The contest between the parties, at this stage, is over the quantum of maintenance fixed by the learned Family Court.

13. On perusal of the pleadings and the materials, particularly, the deposition of witnesses which are available on the record, this Court finds that in her deposition, the petitioner claimed that her husband is earning a monthly salary of Rs.



70,000/- and he has got a house at Tajpur from which he is earning rent income. She has further deposed that her husband has also got a house at Chakia from which he has been earning rent income. She was cross-examined by learned counsel for the Opposite Party No.2 but in course of her cross-examination, she was not even suggested by and on behalf of the O.P. No.2 that there is no house at Tajpur which is on rent or at Chakia from which rent income is derived. In her evidence, she has categorically stated that she had stayed in the house at Tajpur. She has denied the suggestion of the O.P. No.2 that she was in job and had any earning in between Rs. 25,000/- to Rs. 30,000/-.

14. This Court further finds that in his evidence, the Opposite Party No.2 though claimed that his wife is also earning but he could not say as to where and in which capacity she is working in any firm. The witnesses on his behalf also failed to make any significant evidence on this point. The O.P. No.2 has admitted that his wife lived for some time in the Tajpur house. Despite specific case of the petitioner that her husband had got rent income from Tajpur and Chakia house, the Opposite Party No.2 in his evidence did not come out with any statement to negate the claim of his wife as respect rent income. In fact, the mother of O.P. No.2, namely, Indra Devi deposed as O.P.W.-3.



She has categorically admitted in her examination-in-chief that she has a house at Tajpur in which there are shops and she has an income of about Rs. 32,000/- to Rs. 35,000/- per month. This O.P. No.2 happens to be the only son of his parents. Father of O.P. No.2, namely, Anup Lal Sah deposed as O.P.W.- 2 and he also accepted the rent income. One more thing which is worth taking note of is that neither O.P.W.-2 nor O.P.W.-3 in their evidence claimed that they are residing with their son-O.P. No.2 at Mumbai. They did not come out with any evidence that they are dependent upon the income of O.P. No.2. In view of the above materials on the record, this Court would conclude that the case of the Opposite Party No.2 that he has to bear the burden of maintenance of his parents is not substantiated from the evidences on the record. It is further found that the rent income from house property/shops to the extent of Rs. 32,000/- to Rs. 35,000/- is an admitted fact but these materials available on the record have not been duly considered by the learned Family Court.

15. As regards income from salary, this Court finds much force in the submission of learned counsel for the petitioner. The salary slip (Exhibit '1') is showing a deduction to the extent of Rs. 16,178/- which would not be liable to be



deducted for purpose of fixing of maintenance of the petitioner and her minor son. The Hon'ble Supreme Court has in the case of **Kulbhushan Kunwar** (*supra*) held in paragraph '19' as under:-

“19. It was further argued before us that the High Court went wrong in allowing maintenance at 25% of the income of the appellant as found by the Income-Tax Department in assessment proceedings under the Income-tax Act. It was contended that not only should a deduction be made of income-tax but also of house rent, electricity charges, the expenses for maintaining a car and the contribution out of salary to the provident fund of the appellant. In our view, some of these deductions are not allowable for the purpose of assessment of “free income” as envisaged by the Judicial Committee. Income-tax would certainly be deductible and so would contributions to the provident fund which have to be made compulsorily. No deduction is permissible for payment of house rent or electricity charges. The expenses for maintaining the car for the purpose of appellant's practice as a physician would be deductible only so far as allowed by the income tax authorities i.e. in case the authorities found that it was necessary for the appellant to maintain a car.”

16. In view of the aforesaid judgment of the Hon'ble Apex Court, a Bench of Hon'ble Punjab and Haryana High Court in case of **Seema** (*supra*) held in paragraph '13' that a husband cannot be allowed to shirk his responsibility of paying maintenance to his wife, minor child, and parents by availing loans and paying EMIs thereon, which would lead to a reduction



of his carry home salary.

17. The Hon'ble Delhi High Court has also followed the same principle in the case of **Nitin Sharma** (*supra*). In paragraph '24' of its judgment, the Hon'ble Court held as under:-

"24. In the opinion of this Court, while calculating the quantum of maintenance, the income has to be ascertained keeping in mind that the deductions only towards income tax and compulsory contributions like GPF, EPF etc. are permitted and no deductions towards house rent, electric charges, repayment of loan, LIC payments etc. are permitted...."

18. In the case of **Vinny Parmvir Parmar vs. Parmvir Parmar** reported in (2011) 13 SCC 112, the Hon'ble Supreme Court has held that the quantum of maintenance inter-alia depends on the status of the husband. The Hon'ble Apex Court observed in paragraph '12' as under:-

"The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay, having regard to reasonable expenses for his own maintenance and others whom he is obliged to maintain under the law and statute. The courts also have to take note of the fact that the amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and mode of life she was used to live when she lived with her husband. At the same time, the amount so fixed cannot be excessive or affect the living condition of the



other party.”

19. In the case of **Jasbir Kaur Sehgal vs District Judge, Dehradun and Ors.** reported in (1997) 7 SCC 7, the Hon’ble Supreme Court has held that there cannot be any set formula for fixing the amount of maintenance, rather it depends on the facts and circumstance of each case. Thus, the Court must consider the status of the parties, their respective needs and capacity of the husband to pay, having regard to his reasonable expenses for his own maintenance. Accordingly, the amount of maintenance should be such that the wife is able to live in reasonable comfort considering her status and lifestyle she had while living with her husband and she does not feel handicapped during the prosecution of her case.

20. This Court has been informed, at this stage, that during the intervening period, the O.P. No.2 has been promoted and he is now Deputy Executive Engineer and his gross salary has been Rs. 1,14,564/- but in order to deprive his wife from getting an adequate amount of maintenance, he has taken further loan and now a total sum of Rs. 80,405/- is being deducted from his salary. A copy of the salary for the period of 01.02.2023 to 28.02.2023 has been placed before this Court to demonstrate that the Opposite Party No.2 has been paying a sum of Rs.



43,600/- as Equated Monthly Installment (EMI) on account of MSEB Emp CCSoc Mumbai. At this stage, this Court would mention a recent judgment of the Hon'ble Supreme Court in the case of **Rajnesh** (*supra*) wherein the provisions relating to maintenance in various statutes such as the Special Marriage Act, 1954 (SMA), the Hindu Marriage Act, 1955 (HMA), Hindu Adoptions and Maintenance Act, 1956 (HAMA), the Code of Criminal Procedure (CrPC) and Protection of Women from Domestic Violence Act, 2005 (DV Act) have been discussed with reference to the case laws on the subject. The Hon'ble Supreme Court has discussed the criteria for determining quantum of maintenance and further held that the order or decree of maintenance may be enforced like a decree of a civil court, through the provisions which are available for enforcing a money decree, including civil detention, attachment of property, etc. as provided by various provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21.

21. The Hon'ble Supreme Court has directed inter-alia that an Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of the judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the Family Court/District



Court/Magistrates Court concerned, as the case may be, throughout the country.

22. In paragraph '130' of the judgment, the criteria for determining the quantum of maintenance payable to an applicant have been provided and it has been made mandatory for the learned Family Court to take into account the criteria enumerated in Part B-III of the judgment. The Hon'ble Apex Court has held in paragraph '130' as under:-

“130. For determining the quantum of maintenance payable to an applicant, the court shall take into account the criteria enumerated in Part B-III of the judgment. The aforesaid factors are however not exhaustive, and the court concerned may exercise its discretion to consider any other factor(s) which may be necessary or of relevance in the facts and circumstances of a case.”

23. The judgment of the Hon'ble Apex Court in case of **Rajnesh (supra)** has been recently reiterated in case of **Aditi @ Mithi vs. Jitesh Sharma** reported in **2023 INSC 981: 2023 SCC Online 1451**.

24. This Court finds from the impugned judgment and the materials on the record that the learned Family Court did not have the benefit of the judgment of the Hon'ble Apex Court in the case of **Rajnesh (supra)** as the impugned judgment was



passed on 11.04.2018, however, the Hon'ble Apex Court judgment has come during pendency of the revision application. The principles laid down by the Hon'ble Supreme Court are well explained. This Court is of the considered opinion that for the reasons stated hereinabove, the impugned judgment insofar as it fixes maintenance amount at Rs. 10,000/- only cannot sustain the test of law. Thus, this Court sets aside the impugned judgment/order as regards quantum of maintenance and remand this matter to the learned Family Court, Vaishali to take a fresh view of the matter on the quantum.

25. The learned Principal Judge, Family Court, Vaishali at Hajipur shall fix the quantum of maintenance afresh upon consideration of the materials available on the record after giving an opportunity to both the parties to file their respective affidavits in terms of the judgment of the Hon'ble Apex Court in the case of **Rajnesh (supra)**. The entire exercise shall be carried out and judgment fixing maintenance would be delivered by the learned Principal Judge, Family Court, Vaishali at Hajipur within a period of four months from the date of receipt/production of a copy of this order. It goes without saying that in the meantime, by virtue of the order of the Hon'ble Court in the Miscellaneous Case, the Opposite Party No.2 shall keep



on paying Rs. 10,000/- per month to the petitioner.

26. The learned court shall take into account the salary of O.P. No.2 on the date of passing of the impugned judgment and further the effect of enhancement of salary of O.P. No.2.

27. This application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

Rishi/-

AFR/NAFR	AFR
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