

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.26 of 2017

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

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Bibi Shahnaj Wife of Md. Shamser Alam, D/o Muslim, Resident of Village-
Lakhna, P.S.-Kasba, District-Purnea.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Md. Shamser Aam Son of Late Enuddin, Resident of Village-Lakhna, P.S.-
Kasba, District-Purnea

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Bijendra Kumar Singh,Adv.
For the Respondent/s	:	Mr.Shyameshwar Dayal,APP Mr.Kumar Dhananjay Singh,Adv.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

6 24-02-2023 This criminal revision application has been filed against order dated 05.09.2016 passed by learned Principal Judge, Family Court, Purnea in Maintenance Case No. 757 of 2006 / C.I.S. No. 276 of 2013 whereby the learned Principal Judge has partially allowed the petition filed by petitioner under Section 125 Cr.P.C. and directed to pay maintenance only to minor son of petitioner @ Rs. 1,000/- (one thousand) per month till attaining his majority and claim of the petitioner for maintenance was rejected.

2. Learned counsel appearing on behalf of petitioner submits that the Court below has failed to appreciate the evidence produced on behalf of the petitioner and passed the



impugned order mechanically. He next submits that no reason has been assigned as to why petitioner is not entitled for maintenance.

3. However, learned counsel for opposite party no. 2 vehemently opposes the prayer of petitioner and submits that the Court below, after taking into consideration the fact that without any sufficient reason the petitioner refused to live with her husband and as such, she is not entitled for maintenance.

4. Before maintenance can be granted under Section 125 Cr.P.C., the following conditions must be specified:

- “(a) The applicant must be unable to maintain himself or herself, as the case may be;
- (b) The opponent must have sufficient means to maintain the applicant;
- (c) The opponent must have refused or neglected to maintain the applicant; and
- (d) If the applicant is wife,
 - (i) she must not be living in adultery;
 - (ii) she must not have refused to live with her husband without sufficient reasons; and
 - (iii) she must not be living separately by mutual consent.”

5. A wife is required to stay with her husband. She cannot refuse to live with her husband without sufficient cause. In such case, she is not entitled to get maintenance. In this case,



in paragraph – 10 of the deposition of the opposite party no. 2, she has categorically refused to live with her husband without assigning any ground or reason. There is categorical finding by the Court below that without any sufficient reason she does not want to live with the petitioner (husband).

6. In this regard, Section 125(4) of the Cr.P.C. reads as under:

“(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.”

7. Considering the finding recorded by the Court below and the propositions of law, as discussed above, I do not find any merit in this criminal revision application and accordingly, it stands dismissed.

(Prabhat Kumar Singh, J)

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