

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.847 of 2018

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

Md. Jahangir S/o Amiruddin @ Aman Khuwa resident of Village - Belpokhar,
Phanasihat Jahangirpur, PS - Pharkatta, District - Kishanganj.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Shahnaaz Begum Wife of Md. Jahangir, D/o - Opposite Party No. (3) Jhamara & (4) Shahjahan are minor children of opp Opposite party no. 2,3 and 4 are residents of Village - Belpokhra, PO Panasi, P.S. Pharkatta, District - Kishanganj.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Diwakar Sinha, Advocate
For the Respondent/s : Mr. Madhuranand Jha, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 18-12-2023 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The instant revision is listed under the heading for
admission.

3. The instant revision application is directed against
an order 18.01.2017 passed by Principal Judge, Family Court,
Kishanganj in Maintenance Case No.116 of 2015. On perusal of
the impugned order, it is found that the case of the opposite
party no.2 is that her husband ousted her along with two minor
children from her matrimonial home, when the parents of the
opposite party no.2 failed to concede to the demands of
petitioner. It is also found from the record that the opposite party



no.2 in her written objection refused all such allegations, it is specifically stated by the petitioner that the petitioner made several attempts to bring the opposite party no.2 back to her house but the opposite party no.2 always insisted upon the petitioner to stay at her matrimonial home. The impugned order also reflects that a reconciliation proceeding was adopted by the learned Trial Judge and in the reconciliation proceeding it was disclosed that the petitioner had contracted a second marriage and he has been living with his second wife. The petitioner being a Mohammedan is entitled to contract a second marriage but if the first wife refuses to stay with her husband because of the fact that he had contracted a second marriage, such refusal cannot be held to be an intentional refusal.

4. Under such circumstances, the opposite party no.2/wife is entitled to get maintenance.

5. It was contended by the petitioner as opposite party in the trial Court that the petitioner filed several criminal cases against him only to harass him. The petitioner time and again requested the opposite party to stay with her in such case it was financially possible for him to maintain the opposite party and their children but the opposite party no.2/wife refused such proposal of the petitioner.



6. Though, the opposite party no.2 claimed that the petitioner earns Rs.50,000/- per month, she could not produce even a single document in the trial Court in support of her claim. On the other hand the opposite party works as a Assistant of Anganwari Sevika she earns Rs.1500/- per month.

7. In view of the Trial Court the said amount is not sufficient to maintain herself and her two children. Therefore, the Trial Judge passed an order directing the petitioner to pay maintenance at the rate of Rs.6000/- per month to the opposite party no.2 and Rs.2000/- per month each for their two children, total being Rs.10,000/-.

8. The learned Trial Judge, on perusal of the impugned order, I find that did not consider the income of the opposite party as Assistant of Anganwari Sevika. Though, the said amount of Rs.1500/- is not sufficient but the opposite party no.2 income ought to be considered for fixing the quantum of maintenance specially when the opposite party failed to produce any document in support of the income of the petitioner.

9. For the reasons stated above, this Court is of the view that the order of maintenance is required to be modified. The petitioner is directed to pay maintenance at the rate of Rs.3000/- per month to the opposite party no.2/wife and



Rs.1500/- per month each for their minor children, total being Rs.6000/- per month. Such payment shall be made from the date of passing the order by the learned Principal Judge, Family Court, Kishanganj. The petitioner is directed to pay the arrear maintenance in 15 equal monthly installment payable within 10th of January along with the current maintenance allowance. The petitioner is also directed to go on paying the current maintenance allowance and arrears maintenance allowance till its recovery within 10th of each succeeding month.

10. Accordingly, the impugned order is thus modified and the instant revision application is disposed of.

(Bibek Chaudhuri, J)

mdrashid/-

U		T	
---	--	---	--

