

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.104 of 2017**

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

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Sabbir Hussain, s/o Phal Mohamad r/o village Hathauda, PO Chhapia, PS
Hussainganj, District Siwan.

... .. Petitioner/s

Versus

Sakila Bano w/o Sabbir Hussain, d/o Khodaddin Ansari, r/o village Hathauda,
P.O. Chhapia, P.S. Hussainganj, District Siwan, at present r/o village
Bhawrajpur, PO Bhawrajpur, PS Andar, District Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : None
For the Respondent/s : Mr. APP

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 30-01-2023

From the perusal of record, it appears that no one appeared on behalf of petitioner on 17.01.2023, when matter came on board for the first time after the filing, which was made on 30.01.2017 i.e. about lapse of six years.

2. This matter was again listed today but none appeared on behalf of petitioner.

3. The petitioner is aggrieved and dissatisfied by order dated 19.11.2016 passed by Principal Judge, Family Court, Siwan, in Maintenance Case No. 253/2010, whereby and whereunder monthly maintenance of Rs. 2000/- was awarded to the wife (opposite party).

4. The court is having of two options, either to dismiss this



case in default giving a space to petitioner to seek restoration of case and again to keep this litigations alive, where opposite party is struggling for her maintenance, the 2nd option as available to this Court is to go through the records of the case and to take an appropriate view on the basis of materials available on the records and legal provisions as applicable to the given set of facts and circumstances.

5. The court, after considering both as discussed above choosed, the 2nd option by taking note of ultimate object of law as to save the opposite party from the hand of destitution, as therefore perused the records of the case to take an appropriate view on the basis of materials available on the records and legal provisions as applicable to the given set of facts and circumstances, for just and equitable decision.

6. The Learned Family Court directed the petitioner to pay a monthly maintenance amount of Rs. 2000/- from the date of filing of this petition.

7. On perusal of impugned order, it appears that opposite party was ousted from her matrimonial home by the petitioner due to non-fulfillment of demand of dowry, which has been raised for one Yamaha motorcycle. It also appears that opposite party was subjected to physical assault and torture for which a



case was registered under Section 498A of Indian Penal Code.

8. The matter was contested by petitioner before the Learned Family Court saying that opposite party willfully neglected the petitioner and she has her own source of income.

9. On perusal of impugned order, it appears that Learned Family Court examined petitioner as OPW No. 1, where he admitted marriage with opposite party. He also admitted to work in foreign country as Plumber. It is also admitted that opposite party is not living with him, whereas he denied his 2nd marriage and also the allegation of physical assault. He also denied the factum of earning as alleged by opposite party.

10. OPW No. 2, namely, Mintu Ansari also stated that opposite party is legally wedded wife of petitioner. OPW No. 2 also supported that petitioner worked in foreign country where he earned about Rs. 3000-4000/- per month.

11. Finally, OPW No. 3, namely, Nazir Hussain also stated that opposite party is legally wedded wife of petitioner. This witness specifically submitted that due to quarrel and differences between the parties, the family members of petitioner ousted opposite party. This witness also admitted that petitioner was employed somewhere in foreign. From the deposition of witnesses as discussed above, learned Family



Court came to a conclusion that opposite party is a legally wedded wife of petitioner and she was ousted from her matrimonial home without any just reason. The learned Family Court also came to conclusion that there is no evidence on record which may suggest that opposite party was divorced by the petitioner.

12. By taking note of the grounds, raised in present revision application and also as nothing substantial surfaced from the deposition of witnesses as discussed above, this Court find no reason to interfere with the order of the learned Family Court.

13. In the totality of circumstances, this Court finds that by no stretch of imagination, it can be argued that a sum of Rs. 2000/- awarded as a maintenance amount from the date of filing is said to be excessive particularly under the circumstances when the evidence suggest that petitioner is a skilled worker admittedly doing job of Plumber in foreign country. This Court is, therefore, of the considered opinion that the impugned order needs no interference, on this score also.

14. In the circumstances, this Court directs Principal Judge, Family Court, Siwan to recover the entire arrears of maintenance in terms of impugned order with a cost of Rs.



30,000/- from the petitioner by taking all such actions expeditiously, which are permissible under law and ensure that the payment of amount to the opposite party be made available as early as possible. Payment towards maintenance, if made any be adjusted accordingly.

15. Accordingly, this application stands disposed of.

(Chandra Shekhar Jha, J)

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AFR/NAFR	NA
CAV DATE	NA
Uploading Date	03.02.2023
Transmission Date	

