

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1165 of 2017

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

Shankar Prasad Das @ Shanker Das S/o Sri Sitaram Das, R/o Mohalla-
Kastha Town, Deoghar, P.S.- Deoghar, District- Deoghar Jharkhand.

... .. Petitioner/s

Versus

Madhuri Devi D/o Late Bindeshwari Prasad, R/o Mohalla- Ramna, Sherghati,
P.S.- Sherghati, District- Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Arvind Kumar Singh
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

22-08-2023

The present revision application has been filed against order dated 24th of August 2017 passed by learned Principal Judge, Family Court, Gaya in Miscellaneous Case No. 141/2012 (Misc. Case No. 117/2006/16/1998) under Section 127 of the CrPC whereby the quantum of maintenance has been enhanced from Rs. 1000/- to Rs. 3,000/- from the date of order.

2. The brief fact of the case is that as per Hindu rites and customs the marriage between the parties was solemnized in year 1993. It is, thereafter, alleged that after six months of the marriage, the Opposite Party/wife was ousted from her matrimonial home and since then she is living at her parental home. The OP/wife requested the petitioner/husband to take her back to the matrimonial home, but he refused her request and



filed a Divorce Case No. 08/1997 which was dismissed. Thereafter, the OP/Wife filed Misc. Case No. 16/1998 which was later numbered as Misc. Case No. 117/2006 under Section 125 of the CrPC, whereby the learned Principal Judge, Family Court, Gaya *vide* order dated 14.02.2007 after taking into consideration that the petitioner/husband is working as Class IV employee in Rama Devi Bajala Mahila College, Deoghar and has solemnized second marriage with another woman and was neglecting to maintain the OP/first wife, directed the husband/petitioner to pay Rs. 1000/- as monthly maintenance to the OP/wife.

3. After lapse of five years of the earlier order dated 14.02.2007, the wife/OP filed a petition under Section 127 of the CrPC for enhancement of maintenance amount in Misc. Case No. 141/2012 arising out of earlier Misc. Case No. 117 of 2006 wherein the contention of the wife/OP is that she has no other source of income and the prices of essential commodities are on multiple hike and the inflation is on its surge. She is unable to maintain herself with the earlier amount of maintenance of Rs. 1000/- whereas the petitioner/husband is working as Class IV employee in Rama Devi Bajala Mahila College, Deoghar (Jharkhand) and is earning Rs. 12,053/- per



month. The learned Principal Judge, Family Court, Gaya vide order dated 24.08.2017 allowed the petition under Section 127 CrPC (alteration in allowance) filed by the OP/Wife whereunder the quantum of maintenance has been enhanced from Rs. 1000/- to Rs. 3000/-.

4. Learned counsel for the petitioner submits that after marriage in the year 1983, the OP/wife lived with him at matrimonial home till 24th of August, 1984 and thereafter she clandestinely, in the night of 25th of August, 1984 went to her parental home with her father with all her belongings.

5. Earlier, the Family Court, after taking into consideration the relevant material directed the petitioner to pay a sum of Rs. 1000/- and since then there is no change in the financial circumstance of the petitioner. The petitioner is earning Rs. 16,000/- per month but after deduction, he gets only Rs. 11,746/- per month and there is no other source of income. The petitioner has to maintain two daughters and one son, father and mother. The daughters and son were born out of second wedlock of the petitioner.

6. I have heard learned counsel for the petitioner and have perused the order impugned.

7. Upon perusal of the order impugned, it appears



that four witnesses were examined from the side of OP including herself who was examined as PW-1 and two witnesses were examined on behalf of the petitioner and the petitioner was examined as O.P.W-2. No documentary evidence was produced by both the parties and the learned Family Court has disbelieved the submission of the petitioner that OP/Wife earns Rs. 20,000/- per month from stitching and tuition inasmuch as no cogent material was produced by the petitioner in this regard. Witnesses on behalf of wife/OP have stated about the rise in inflation in the span of ten years from the date of passing of the original order of maintenance in 2007 and from impugned order it appears that at that point of time the earning of the petitioner was disclosed as Rs. 12,000/- The learned Family Court called for a report from the Principal of Rama Devi Bajala Mahila College, Deoghar, where the petitioner has been working as fourth grade employee, pertaining to salary received by him *vide* letter no. 376/2014 dated 09.12.2014 and the report thereof, was submitted by the Principal which says that the petitioner is earning Rs. 16,298/- per month and after deduction, he carries the amount of Rs. 11,746/- per month.

8. It is not in dispute that OP is the first wife and during subsistence of the first marriage, the petitioner has



performed the second marriage. As such, in my opinion, the first wife has the first right to get the maintenance from her husband, particularly, when the divorce petition filed by the petitioner has been rejected.

9. The Hon'ble Supreme Court in the case of **Anju Garg & Anr v. Deepak Kumar Garg** reported in **2022 SCC Online 1313** has held that *it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children and the husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds.*

10. In the case of **Chaturbhuj v. Sita Bai** reported in **(2008) 2 SCC**, the Hon'ble Apex Court has held that *the object of maintenance proceedings is not to punish a person for his past neglect, but to prevent vagrancy and destitution of a deserted wife, by providing her food, clothing and shelter by a speedy remedy.*

11. The Family Court, Gaya after taking into consideration increased cost of living and day-to-day expenses and further taking into account that the husband has failed to rebut the claim of the wife/OP that she is not able to maintain herself with the earlier amount of maintenance which was



passed ten years back, learned Principal Judge, has allowed the application under Section 127 of the CrPC for the enhancement of maintenance from Rs. 1000/- to Rs. 3000/-.

12. In view of the aforesaid discussions on facts and on law, I find the order impugned dated 24.08.2017 passed in Miscellaneous Case No. 141/2012 by the learned Principal Judge, Family Court Gaya, does not require any interference under the revisional jurisdiction of this Court.

13. Accordingly, the present revision petition stands dismissed.

(Anil Kumar Sinha, J)

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