

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.685 of 2017

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

Prakash Kumar son of Surendra Kumar alias Sukan Sah resident of Village - Shripur, Police Station - Shivaji Nagar, District - Samastipur, presently residing at Shridham Apartment, 3rd Floor, Jharudih, Police Station - District - Dhanbad Jharkhand.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. Alka Mishra Wife of Prakash Kumar daughter of Dr. Ramesh Mishra resident of Village - Bangaon Thakurpatti, Police Station - Bangaon, District - Saharsa.
3. Tejashwani Anand minor daughter of Prakash Kumar resident of Village - Shripur, Police Station - Shivaji Nagar, District - Samastipur, Both serial nos. 2 and 3 at present resident at M.J. Memorial Hospital, Refugee Colony, near Airtel Tower, ward No. 23, Saharsa.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Satya Narayan Mishra, Adv.
For the State/s	:	Mr. Gajendra Nath Ojha, APP
For the O.P No.2 &3	:	Mr. R. K. Sinha 2, Adv.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

5 07-04-2023 Heard learned counsel for the petitioner, learned counsel for the State and counsel for O.P. No.2.

The present Cr. Revision Application has been filed for setting aside the order dated 17.03.2017 passed by Principal Judge, Family Court, Saharsa in Misc. Case No.15/2014 by which the court below has directed to the petitioner to pay Rs.5,000/- per month to the O.P. No.2 and Rs.3,000/- per month to the minor child from the date of filing of the maintenance case.

Counsel for the petitioner submits that this order has been passed without applying the judicial mind. Counsel submits that as per Section 125(4) of Cr.P.C., there is a special provision that if wife shall live without any reasonable cause, she is not entitled for maintenance. Counsel for the petitioner submits that here in the present case, there is no reasonable cause ascertain by which it transpires that she has left the husband without any reasonable cause and therefore, not entitle to receive any maintenance under Section 125(4) of Cr.P.C.

Counsel for petitioner further submits that admittedly, O.P. No.2 is wife and from the conjugal life of the petitioner, O.P. No.2 got one female child to whom the Petitioner is ready to pay maintenance. He offered to pay much more amount of maintenance whatsoever fixed by the Principal Judge, Family Court, Saharsa.

Counsel for O.P. No.2 on the other hand submits that the scope of criminal revision is very limited particularly under Section 19(4) of the Family Court Act. The act itself very much clear that the question of legality, propriety and correctness have to be tested only. Here in the present case, the question of legality raise that whether the situation of Section 125(4) of Cr.P.C. are present or not and if present, wife is not entitled for

maintenance.

Counsel for O.P. No.2 submits that on the perusal of the order impugned, it transpires that the court has categorically concluded and found that from the evidence of the parties, it established that petitioner namely, Alka Mishra (here in the criminal revision O.P. no.2) was tortured and the criminal case was filed by her and she with her child drove out from her sasural by petitioner and both living at the house of parents.

In the light of the said findings, the basic contention of the petitioner is not correct and hence, this court is of the opinion that the benefit of provisions of Section 125(4) of Cr.P.C., petitioner is not entitled for the benefits of Section 125(4) of Cr.P.C. As reason has already come upon test of the evidence. About earning, there is already finding of the court that the petitioner has sufficient earning.

On the contention of the counsel for petitioner that for his daughter, he may pay more but so far as the legal test is concerned, this court does not find any matter of legality, propriety and correctness and therefore, there is no need of interference in the said order and the present Cr. Revision is hereby dismissed. If petitioner wants to pay more money to her daughter, it is his choice to pay on which Court shall not commit

any thing. So far as the legal right is concerned, that is already vested in Cr.P.C., that is with the span of time, the wife and the person getting maintenance may pray before the court for enhancement for the same.

The Principal Judge, Family Court, Saharsa is directed to look into the matter within 30 days as how much total amount has to be realized from the petitioner and how much amount still due. For realization of the said amount, the Principal Judge, Family Court is directed to take all steps including the issuance of processes under Form 18, 19 of Schedule II of Cr.P.C.,1973.

With this observation, this Cr. Revision Application is hereby dismissed.

(Dr. Anshuman, J.)

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