

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1254 of 2017

In
Miscellaneous Appeal No.914 of 2016

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

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Vinod Kumhar, s/o Ramjanam Kumhar, vill- Ghataion, PS-Kudra, Dist-Kaimur at Bhabhua, at present residing at vill-Gaighat, PO-Karwandia, PS Sasaram, Dist-Kaimur at Bhabhua.

... .. Petitioner/s

Versus

1. Bimla Devi, w/o Vinod Kumhar
2. Ravi Kumhar, S/o Vinod Kumhar
3. Chandan Kumhar, s/o Vinod Kumhar
4. Pushpa Kumari, D/o Vinod Kumhar
All are residents of village- Galighat, PO-Karwandia, PS-Sasaram, Dist-Kaimur at Bhabhua, present address village-Ghataion, PS-Kudra, Dist-Kaimur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Uday Pratap Singh, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

8 25-09-2023

Re: I.A. no. 9723 of 2016

1. The present interlocutory application has been filed under Section 5 of the Limitation Act for condonation of delay of 23 days in filing the present revision application.
2. Learned counsel for the petitioner submits that as the petitioner was suffering from Jaundice and he was undergoing medical treatment, the present petition is filed beyond the limitation period.



3. Considering the reason as aforesaid, the delay in filing the present revision application is hereby condoned and I.A. no. 9723 of 2016 is allowed.

Re: Cri. Rev. no. 1254 of 2017

4. Heard learned counsel for the petitioner and learned APP for the State.

5. The present revision application has been filed by petitioner against the order dated 02.05.2016, passed under Section 125 Cr.P.C., by the learned Principal Judge, Family Court, Kaimur at Bhabua, in Maintenance case no. 18 of 2010, whereby and whereunder the petitioner has been directed to pay Rs. 800/- per month each to opposite parties no. 2, 3 and 4, who are minor sons and daughter of petitioner; totaling to a sum of Rs. 2400/- per month. Opposite party no. 1 namely Bimla Devi (wife) filed the aforesaid maintenance case claiming maintenance for herself and her three children.

6. The brief facts of the case giving rise to the present revision application is that the opposite party no. 1 was married to the petitioner on 05.06.1997 at Kashi Vishwanath Temple, Varanasi according to Hindu rites and customs. After marriage, she was blessed with three children but she was subjected to torture and harassment by the



petitioner due to non-fulfilment of the demand for dowry. Opposite party no. 1 has also stated that earlier, she was married with one Rameshwar Kumhar @ Rameshwar Prajapati in the year 1996 and after dissolution of her first marriage, she solemnized second marriage with the petitioner but the petitioner had ousted opposite party no. 1 from her matrimonial home on 10.02.2010 and solemnized second marriage with one Sabita Devi, just two years prior to the filing of the maintenance case by opposite party no. 1. The wife has contended that the petitioner is earning Rs. 60,000/- annually from the agricultural land, Rs. 10,000/- per month by rearing cattle and Rs. 6,000/- per month by driving truck.

7. Learned counsel for the petitioner submits that opposite party no. 1 is not the wife of the petitioner rather she is his maternal aunt and the three children, for whom maintenance is being claimed, are not born out of the wedlock of the petitioner and opposite party no. 1 but they are begotten from the marriage of opposite party no. 1 with petitioner's maternal uncle Rameshwar Prajapati. Learned counsel further submits that the petitioner is a labourer and is married with one Sabita Devi and leading a happy conjugal life with her having no concern with opposite party no. 1 and her three



children. He next submits that it is an admitted position that opposite party no. 1 got married firstly with Rameshwar Kumhar (Prajapati), who is the maternal uncle of the petitioner and there is no proof to show that the said marriage got repudiated and the contention of opposite party no. 1 that she solemnized second marriage with the petitioner, cannot be believed, as it has no moral and legal values.

8. Heard the parties and gone through the materials on record. I find that the learned Family Court has framed two issues :-

(1) Whether opposite party no. 1 is legally married wife of the petitioner and three children begotten from the said wedlock and

(2) Whether the opposite parties are entitled for maintenance and what should be the quantum of maintenance amount.

9. Three witnesses were examined from the side of opposite parties including opposite party no. 1 Bimla Devi, opposite party no. 2 Ravi Kumhar and the third is Vijay Shankar Prajapati. The wife has also exhibited Exhibit 1 which is Voter I.D. Card of the year 2009, which would show her husband's name as Vinod Kumhar i.e. the petitioner herein. Opposite party no. 2, in his cross-examination, has



stated that petitioner Vinod Kumhar is his father and he along with his two other siblings are residing at Gaighat since childhood. He further stated that his father earns by cultivation and is driving truck and denied the suggestion that his father is a labourer. The third witness from the side of opposite party no. 1 has also reiterated the same version. The petitioner examined 05 witnesses and exhibited two documentary evidences, which are copies of the Voter list of the year 2012 and 15.

10. The learned Family Court, after appreciation of evidence, has come to the conclusion that the Voter list produced by the petitioner i.e. husband cannot be believed and they are of the year 2012 and 2015, prepared during the pendency of the present proceedings and have been prepared for taking advantage in this case. The Court has also observed that opposite party no. 1- wife has solemnized second marriage with the petitioner and all the three children are begotten from the second marriage but she has failed to show the repudiation of her first marriage, hence she is not entitled for maintenance but the children are entitled for maintenance. The Family Court has awarded maintenance to three children @ 800/- per month each totaling to a sum of Rs. 2400/- while refusing to



award maintenance to the wife i.e. opposite party no. 1.

11. Considering the aforesaid facts and the findings arrived at by the learned Family Court, Kaimur at Bhabua based on evidence, I do not find any reason to interfere with the impugned order, accordingly, the same stands dismissed.

(Anil Kumar Sinha, J)

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