

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.635 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Araria

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SANJAY MAHTO S/o Durga Mahto R/o village- Sontha, P.S.-
Kochadhaman, District- Kishanganj

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Phulo Devi @ Phulan Devi D/o Upender Choudhary, W/o Sanjay Mahto R/o village- Om Nagar Ward No. 8, P.S.- Araria, District- Araria
3. Sakchi Kumari D/o Sanjay Mahto Children of Sanjay Mahto Under the care and Guardianship of their mother Phulo Devi (Opposite Party No. 2). R/o village- Om Nagar Ward No. 8, P.S.- Araria, District- Araria
4. Sonakchi Kumari D/o Sanjay Mahto Children of Sanjay Mahto Under the care and Guardianship of their mother Phulo Devi (Opposite Party No. 2). R/o village- Om Nagar Ward No. 8, P.S.- Araria, District- Araria

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anamul Haque, Advocate
For the Respondent/s : Mr. Akshay Lal Pandit, APP

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 3 27-09-2023 1. Heard learned counsel for the petitioner and learned APP for the State.
2. Petitioner, who is the husband, has filed the present revision application, being aggrieved by the order of maintenance dated 16.03.2019, passed by learned Principal Judge, Family Court, Araria in Maintenance Case no. 185 of 2017, by which the learned Court has directed the petitioner to pay a sum of Rs. 5,000/- per month to opposite party no. 2 i.e. the petitioner's wife and Rs. 1500/- each to opposite parties no. 3 and 4, who are the daughters of the petitioner, aged about



06 years and 03 years, respectively. The total maintenance amount to be paid comes to Rs. 8,000/- per month.

3. The brief facts giving rise to the present revision application is that in the year 2007, the marriage between the petitioner and opposite party no. 2 was solemnized. Out of wedlock, three female children were born and after the birth of the third daughter, opposite party no. 2 was being subjected to cruelty. On 06.04.2016, she was assaulted and was ousted by the petitioner. Thereafter, a complaint case was filed by petitioner's wife bearing Complaint Case no. 679 C of 2016 under Sections 498A and 323 of the Indian Penal Code, which was later on compromised and the case was closed in the year 2017. After a brief truce, the petitioner started torturing opposite party no. 2 and again, complaint case was filed bearing Complaint Case no. 1505 C of 2017, which is still pending. The husband of opposite party no. 2 is a teacher and earns Rs. 30,000/- per month by imparting tuition, Rs. 20,000/- per month from toddy business and Rs. 30,000/- per annum through agricultural produce. The petitioner has three daughters, out of whom two are living with opposite party no. 2 and one is living with the petitioner. Opposite party no. 2 is having no source of income and has been residing with her parents from before.



4. Three witnesses were examined from the side of opposite party no. 2 and five witnesses were examined by the petitioner. The wife-opposite party no. 2, during her examination, has stated that petitioner earns Rs. 90,000/- per month as he is a teacher in a Middle School as well as gives tuition and also earns through agricultural land, toddy business and car rental etc.

5. Learned counsel for the petitioner submits that the petitioner is a landless person, is unemployed and earned Rs. 1500/- per month by doing physical work and opposite party no. 2 is earning Rs. 20,000/- from her shop. It has further been submitted that on several occasions, the petitioner has requested opposite party no. 2 to live with him but she is not ready to live with the petitioner. He next submits that petitioner has filed Matrimonial case no. 18 of 2016 before the Family Court, Kishanganj for restitution of conjugal rights and is ready to keep his wife with full honour and dignity. Lastly, it is submitted that Rs. 8,000/- awarded by the Court as maintenance is excessive.

6. I have heard learned counsel for the petitioner. Upon consideration of the aforesaid facts and the finding arrived at by the learned Family Court and the fact that two children are living with opposite party no. 2, I come to the conclusion that



the maintenance awarded to opposite parties no. 2, 3 and 4 @ 8,000/- per month is not excessive and opposite party no. 2 has sufficient reasons for not living with the petitioner. The relationship of husband and wife is not disputed. Opposite party no. 2 has filed a case against the petitioner for subjecting her to torture and mental agony. Wife has also alleged that petitioner has solemnized second marriage with one Pinky Devi and the learned Family Court has arrived at the finding that the petitioner has enough means to maintain his wife and two children. Wife has clearly stated in her deposition that her husband has solemnized second marriage, from which, he also has a child. The question of capability of the wife to maintain herself is not there, inasmuch as the evidence that she earns by doing labour work whereas the allegation of husband is that she is earning from shop, is a hearsay evidence based upon surmises. Reference in this regard be had to the judgment rendered by the Hon'ble Apex Court in the case of ***Chaturbhuj v. Sita Bai*** reported in ***(2008) 2 SCC***, in which 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.*



7. Accordingly, the present criminal revision petition
is dismissed.

(Anil Kumar Sinha, J)

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