

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1300 of 2018

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

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Bharat Prasad Gupta @ Bharat Prasad @ Bharat Kr., son of Baidyanath Prasad Gupta @ Baidyanath Prasad, Resident of Mohalla – Ilamram Chauck, Bettiah (Near Jamunaram Dharamshala), Post Office + Police Station – Bettiah (Town), District – West Champaran

... .. Petitioner/s

Versus

1. State Of Bihar
2. Asha Devi, D/o Jhulan Prasad Gupta @ Bhulan Prasad, Resident of Village + Post Office – Pohara Lachhtaunta, Police Station – Gaunaha, District – West Champaran

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shashank Chandra, Advocate
		Mr. Vatsal Verma, Advocate
For the Respondent/s	:	Mr. Satyadev Prasad Singh Yadav, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 14-12-2023 Heard the learned counsel for the parties.

2. The instant revision is directed against an order of maintenance passed by the learned Principal Judge, Family Court, West Champaran, Bettiah in Maintenance Case No. 149 (M) of 2013 on 20th of September, 2018, directing the petitioner / husband to pay maintenance at the rate of Rs. 3,000/- per month in favour of the Opposite Party No. 2 / wife and Rs. 1,500/- per month in favour of their daughter.

3. It is submitted by the learned Advocate for the



petitioner that the learned court below passed the order of maintenance without considering the income of the petitioner. According to him, the petitioner is working in a cloth shop and earns Rs. 3,000/- per month, therefore it is not possible for him to pay more amount than what he earns. The learned Trial Judge in his judgement clearly observed “हॉलाकि विपक्षी के सम्पत्ति एवं आय के श्रोत के सम्बन्ध में कोई दस्तावेजी साक्ष्य अभिलेख पर उपलब्ध नहीं है”. Therefore, it is found that the learned Trial Judge fixed the amount of maintenance without considering the income of the petitioner.

4. It is unfortunate to note that in almost all the Courts of the State, the Principal Judge / Judges, Family Court and the learned Magistrates while disposing of the petition under Section 125 of the Cr.P.C. do not consider the specific direction of the Hon'ble Supreme Court in the case of *Rajnesh Vs. Neha*, reported in *(2021) 2 SCC 324*. It is specifically directed by the Hon'ble Supreme Court in *Rajnesh* (supra) that while disposing of a petition for maintenance under Section 125 Cr.P.C. or under the specific provision of Protection of Women from Domestic Violence



Act, the Trial Court shall direct both the parties to file affidavits of assets and liabilities. It is directed that on the basis of such affidavits, the income of each respective parties should be decided by the Trial Court. In the instant case, the parties were not directed to file affidavits of assets and liabilities and, therefore, maintenance allowance was fixed only on the basis of surmises and conjecture.

5. It is vehemently contended by the learned Advocate for the Opposite Party No. 2 that the principle laid down in Rajnesh (supra), is only applicable in case of interim maintenance because an application for interim maintenance can only be decided on the basis of application supported by affidavit by the Trial Court at an interim stage. However, the principles laid down in the said judgement is not at all applicable at the final stage and at the final stage, the issues involved in a case under Section 125 of the Cr.P.C. are to be decided on the basis of the evidence adduced by the parties. In the instant case five witnesses were adduced by the Opposite Party No. 2 and three witnesses were examined by the present petitioner. On the basis of evidences on record, the learned Trial Court



decided the Maintenance Case No. 149(M) of 2013 and there is no reason to invoke the principles of Rajnesh (supra) in the matter of final disposal of a maintenance proceeding.

6. Having heard the learned counsels for the parties and on perusal of the impugned judgement as well as the decision in the case of Rajnesh (supra), this Court likes to record that when an affidavit of assets and liabilities are filed by the parties with all supporting documents relating to income, the sworn affidavits can also be considered at the time of final hearing of the maintenance proceeding. Any evidence against the sworn affidavit adduced by any of the parties will make the affidavit of assets and liabilities filed by one of the parties questionable. Therefore, the parties adducing evidence are at liberty to cross-examine the said witnesses. When there is no evidence with regard to income of the respective parties, the Court can very well consider the affidavits of assets which is directed to be filed by the Hon'ble Supreme Court in the aforesaid case at an interim stage. It cannot be allowed that a document can only be looked into at the interim stage and not at the final stage of



assessing the income of the parties.

7. In the instant case, it is already recorded that though the parties have examined series of witnesses, conclusive evidence with regard to income of the petitioner has not come. Moreover, a judgement of the Higher Court operates as authority retrospectively.

8. Therefore, while setting aside the impugned order, this Court directs the parties to file affidavits of assets and liabilities in the Trial Court within two months from the date of communication of this order and the learned Trial Court shall pass a fresh judgement within one month taking into consideration the income and liabilities of the parties.

9. At the same time, I am not unmindful to note that the petitioner and the Opposite Party No. 2 and her little daughter must maintain their livelihood in the meantime. Therefore, without prejudice to the rights and contentions of the parties, the petitioner is directed to go on paying lump-sum maintenance allowance at the rate of Rs. 25,00/- per month to the petitioner till the disposal of the Maintenance Case No. 149(M) of 2013.

10. The instant order shall not take away the right



of the Opposite Party No. 2 to claim arrears maintenance, which had been passed by the Trial Court in appropriate proceeding.

With the aforesaid observations / directions, this criminal revision stands allowed in part.

(Bibek Chaudhuri, J)

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