

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1444 of 2018

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

Manoj Sah S/o Jai Kishun Sah, Resident of Village- Pahari Majhaua, P.S.-
Choutarwa, District- West Chamaparan.

... .. Petitioner

Versus

1. The State of Bihar
2. Chinta Devi W/o Sri Manoj Sah D/o of Laxmi Sah, At present residing at Mohalla-Shastri Nagar, P.S-Bagaha, District-West Champaran.
3. Rahul Kumar Minor S/o Sri Manoj Sah Under the guardianship of their mother namely Chinta Devi. At present residing at Mohalla-Shastri Nagar, P.S-Bagaha, District-West Champaran.
4. Golu Kumar Minor S/o Sri Manoj Sah Under the guardianship of their mother namely Chinta Devi., At present residing at Mohalla-Shastri Nagar, P.S-Bagaha, District-West Champaran.
5. Sneha Kumari Minor D/o Sri Manoj Sah. Under the guardianship of their mother namely Chinta Devi. At present residing at Mohalla- Shastri Nagar, P.S.- Bagaha, District- West Chamapran.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Ravindra Kr Sinha No.2, Advocate
For the Respondent/s	:	Mr. Sri Nirmal Kumar Sinha, APP
For the O.P. No.2	:	Mr. Aditya Nath Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 07-12-2023 Heard learned counsel for the petitioner and learned
counsel for the opposite parties.

2. Petitioner in the present case is seeking sitting aside
of the order dated 21.08.2018 passed by learned Principal Judge,
Family Court, West Champaran, Bettiah in Maintenance Case
No. 154M of 2013 whereby and whereunder the learned court
has been pleased to allow a monthly maintenance amount of Rs.
2,000/- per month to each of the applicants with effect from



29.06.2013. The applicants in the learned court below are Opposite Party Nos. 2 to 5 in this Court.

3. Learned counsel for the petitioner has assailed the impugned order on the ground that the learned Family Court could not appreciate the import of sub-Section 4 of Section 125 Cr.P.C. It is submitted that in Divorce Case No. 247 of 2009, the Opposite Party No. 2 admitted that she is living separately for last ten years and that she wants to take divorce from her husband who was plaintiff in the divorce case. It is submitted that if the wife deserted her husband, she admitted that she had gone to her *sasural* ten years ago and now she wants to take divorce from her husband, it is crystal clear that the Opposite Party No. 2 was not willing to live with the petitioner. In such circumstance, no maintenance could have been allowed under Section 125 Cr.P.C.

4. So far as the maintenance allowed to the Opposite Party Nos. 3 to 5 are concerned, no serious challenge has been thrown to the maintenance awarded to the minor children.

5. Learned counsel for the Opposite Party Nos. 2 to 5 submits that the Opposite Party No. 2 had left the matrimonial house because of the ill behaviour of her husband and, in fact, she had been thrown out of her matrimonial home. Learned



counsel submits that so far as the maintenance allowed to minor children are concerned, despite the order of this Court passed as back as on 14.02.2020 staying only the maintenance awarded to Opposite Party No. 2, the petitioner has not paid a single farthing to Opposite Party Nos. 3 to 5.

6. Having heard learned counsel for the petitioner and the opposite parties and on perusal of the records, this Court is of the considered opinion that the impugned order insofar as it relates to the maintenance awarded to Opposite Party No. 2, the same is not sustainable. It is evident from the order dated 21.08.2018 passed by the learned Principal Judge, Family Court West Champaran in Divorce Case No. 247 of 2009 that the Opposite Party No. 2 was defendant in the said case and had herself admitted in her evidence that lastly she had gone to her *sasural* ten years ago and she further stated in her chief as well as cross-examination that she wants to take divorce from the plaintiff. In this case, her husband was seeking divorce on the ground of cruelty and desertion. Although, the learned Family Court has observed that no documentary evidence could be brought with regard to cruelty and desertion, but the witnesses adduced on behalf of the plaintiff supported the allegation of cruelty and desertion by the defendant. The court decreed the



suit and the marriage between the parties has been dissolved.

7. On the face of the findings of the learned Family Court in divorce case, this Court is of the opinion that sub-Section 4 of Section 125 Cr.P.C. would be attracted. The said provision reads as under:-

“No wife shall be entitled to receive an
[allowance for the maintenance or the interim
maintenance and expenses of proceeding, as the
case may be], allowance from her husband under
this section if she is living in adultery, or if, without
any sufficient reason, she refuses to live with her
husband, or if they are living separately by mutual
consent.”

8. This Court, therefore, allows the revision application insofar as it relates to Opposite Party No. 2 by setting aside the impugned order to the extent the Opposite Party No. 2 has been allowed maintenance. So far as the other opposite parties are concerned (Opposite Party Nos. 3, 4 and 5), they are the minor children of the petitioner who have been rightly awarded the maintenance amount. This Court would not interfere with the maintenance awarded to Opposite Party Nos. 3, 4 and 5.

9. This Court has been informed that the petitioner has not paid a single farthing to his minor children over all these

1. Substituted by Act 50 of 2001, S.2, for “allowance” (w.e.f. 24-9-2001).



years despite there being an order of the learned Principal Judge, Family Court in maintenance case and that there was no stay of the said order in respect of Opposite Party Nos. 3, 4 and 5, in such circumstance, this Court deems it just and proper to impose a cost of Rs. 25,000/- upon the petitioner, which he would be liable to pay to the Opposite Party Nos. 3, 4 and 5 together with the entire outstanding maintenance amount within a period of two months from the date of receipt/production of a copy of this order. The learned Principal Judge, Family Court, West Champaran, Bettiah shall take appropriate steps to execute the order as expeditiously as possible.

10. This revision application is disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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