

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.11 of 2017

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

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Anant Kumar Pandey Son of Madeshwar Pandey Resident of Village-P.O.
Sadabeh, P.S. Dulhin Bazar, District-Patna

... .. Petitioner/s

Versus

1. State Of Bihar
2. Nikki Choubey Wife of Anant Kumar Pandey Resident of Village-P.O.
Sadabeh, P.S. Dulhin Bazar, District-Patna, at Present Resident of Village-
Dhalmaniya, P.S. Agiwan, District Bhojpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Tiwary, Adv
For the Respondent/s : Mr. Damodar Prasad Tiwary, APP

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

6 27-07-2023 The present revision application has been filed for setting aside order dated 30.11.2016 passed in Maintenance Case No. 191 of 2010 by the learned Principal Judge, Family Court, Bhojpur, Ara whereby the learned court has directed the petitioner to pay a sum of Rs. 10,000/- per month to Opposite Party No.2 (wife) from the date of filing of maintenance petition dated 24.09.2010.

2. The petitioner got married to OP No.2 on 24.05.2002 and one girl child was born out of the wedlock on 30.08.2006. The petitioner and his family members started demanding dowry of Rs. 1 Lac after the year 2005 and due to non fulfillment of demand the OP No.2 was subjected to cruelty for which a criminal case was lodged by the OP No.2 in which



the petitioner was granted anticipatory bail and was directed to pay Rs. 750/- per month. But according to OP No.2, the same is not paid by the petitioner. In the year 2008, OP No.2 fell severely ill and the petitioner including his family members did not take care of her and did not pay any money in her treatment and expenses of entire treatment was borne by his father. After recovery from her illness, she went back to her Sasural along with his daughter but still there was no change in the attitude of family members and on 05.09.2010, OP No.2 was ousted from her matrimonial home and since then, she has been living at her parental home.

3. Thereafter OP. No. 2 filed a maintenance case before the Family Court, Bhojpur, Ara on 24.09.2010 bearing Maintenance Case No. 191/2010 wherein the petitioner was directed to pay a sum of Rs. 10,000/- from the date of institution of the case.

4. Learned counsel for the petitioner submits that on 15.10.2008 the father of OP No. 2 came at his house and took his daughter i.e., OP No.2 with him and since then she has been living at her parental home on her own sweet will. The petitioner tried hard to bring her back on several occasions but the father of OP No. 2 did not perform *Bidaee*. The petitioner



has filed a case bearing Case No. 726/2011 under Section 9 of the Hindu Marriage Act but OP No.2 did not appear, hence an *ex parte* decree on 14.03.2014 was passed where restitution of conjugal rights was ordered by the Family Court. Father of the petitioner has got only two Bighas of land and the petitioner is unemployed, hence he is unable to pay the maintenance amount. The petitioner is ready to keep the OP No. 2 and his daughter with full honour and dignity.

5. On the other hand, learned counsel appearing for OP No.2 has argued that the petitioner has ten Bighas of agricultural land and is only son of his father who is a retired person and is getting monthly pension. Petitioner is also an educated person and teaches students from which he earns sufficient amount. Besides this, the petitioner earns from three tempos given on rent for plying and from both the sources the earning of the petitioner is Rs. 30,000/-. He further submits that OP No.2 never received notice from the court regarding petition for restitution of conjugal rights filed by the petitioner and the order is *ex parte* in nature. OP No. 2 is an unemployed lady with a daughter who has reached a marriageable age. Her old father is not able to maintain both his daughter and grand-daughter. The petitioner has not paid any single penny towards the



maintenance amount till date which was awarded by the Family Court on 30.11.2016. The petitioner was also directed to pay Rs. 750/- per month while granting anticipatory bail to him but the petitioner has failed to pay the same also to OP No. 2.

6. From the side of the petitioner four witnesses were examined while two witnesses were examined from the side of OP No. 2.

7. I have heard learned counsel for the parties and perused the impugned order. From the order impugned, it appears that in the cross-examination the petitioner has accepted that he is the only son of his parents and all his sisters are married. His father is not receiving any pension he has no knowledge about his agricultural land. The Family Court while going through the evidence of the father of petitioner who is OP No.3 has recorded that father of the petitioner has admitted that he is getting pension of Rs. 8,500/- per month which falsified the evidence of the petitioner. The learned court further recorded that petitioner has stated in his evidence that he is living separately from his father but father of the petitioner has not, in his deposition, admitted this fact that his son (petitioner) is living separately from him. Accordingly, the learned Family Court has disbelieved the evidence of the petitioner/husband and



has concluded that the husband is giving false evidence and concealing the real fact. As such, no reliance can be placed on the testimony of petitioner/husband. The wife (OP No.2) in her deposition has stated that she is unable to maintain herself as well as her daughter and she has no income of her own whereas the petitioner has income of Rs. 30,000/- per month from the sources mentioned therein. The learned Family Court has also arrived at the conclusion that the petitioner has stated that he is unemployed but his evidence during course of scrutiny was found unbelievable and the petitioner/husband has intentionally concealed his income. Accordingly, the Family Court awarded Rs. 10,000/- as maintenance.

8. The Hon'ble Supreme Court in the case of **Anju Garg & Anr v. Deepak Kumar Garg** reported in **2022 SCC Online 1313** has held that *it is the sacrosanct duty of the husband to provide financial support to the wife and to the minor children and the husband is required to earn money even by physical labour, if he is an able-bodied, and could not avoid his obligation, except on the legally permissible grounds.*

9. In the case of **Chaturbhuji v. Sita Bai** reported in **(2008) 2 SCC**, 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.

10. In view of the aforesaid discussions, I come to the conclusion that the order impugned dated 30.11.2016 passed in Maintenance Case No. 191/2010 by the learned Principal Judge, Family Court, Bhojpur, Ara does not require any interference under the revisional jurisdiction of this Court.

11. Accordingly, the present revision petition sans merit and is dismissed.

(Anil Kumar Sinha, J)

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