

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.646 of 2017

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

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Dilip Sah, Son of Sri Yogeshwar Sah, Resident of Saidpur, P.S.- Naokothi,
District- Begusarai.

... .. Petitioner

Versus

1. The State of Bihar
2. Nutan Devi, Wife of Dilip Sah, Daughter of Rampukar Tanti, Resident of Saidpur, P.S.- Naokothi, District- Begusarai.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Sudhanshu Kumar Lal, Advocate
		Mr. Pritish Kumar Lal, Advocate
For the State	:	Ms. Indu Kumari Srivastava, APP
For the Informant	:	Mr. Sandip Kumar Gautam, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

14 10-10-2023 Heard learned counsel for the petitioner, learned

counsel for the Opposite Party No. 2 and learned APP for the

State.

I.A. No. 1850 of 2017 at Flag 'B'

2. This application has been filed under Section 5 of
the Limitation Act seeking condonation of delay of 183 days.

3. There is no opposition to the application, hence, the
delay of 183 days in filing of the revision application is
condoned.

4. I.A. No. 1850 of 2017 is allowed.

5. The revision application has been taken up for
consideration.

6. The petitioner in the present case is aggrieved by



and dissatisfied with the judgment dated 06.12.2016 passed in Maintenance Case No. 150M of 2011 whereby and whereunder the learned Principal Judge, Family Court, Begusarai has been pleased to award a maintenance amount of Rs.3,000/- per month to the opposite party no. 2 and the petitioner has been directed to pay the said amount to the opposite party no. 2 latest by 10th day of every month. The payment shall be effective from the date the opposite party no. 2 was driven out from the matrimonial home i.e. 17.11.2011. The learned Principal Judge has further allowed a sum of Rs.15,000/- (one time) in lump sum towards the cost of litigation admissible to the opposite party no. 2.

7. Mr. S.K. Lal, learned counsel representing the petitioner has assailed the impugned judgment on the ground that there was no valid marriage between the petitioner and the opposite party no. 2. It is submitted that opposite party no. 2 was married to one Indal Tanti and there was no divorce between the opposite party no. 2 and said Indal Tanti, therefore, during the lifetime of her spouse, if the opposite party no. 2 claims to have married the petitioner, she would not acquire the status of a wife, hence, would not be entitled for any maintenance from the petitioner.



8. Learned counsel further submits that the mother of the opposite party no. 2 has in course of her deposition stated that there was no divorce between the opposite party no. 2 and Indal Tanti, therefore, on the basis of a photocopy of the *Panchanama* which was not a valid proof of fact that the marriage between the opposite party no. 2 and Indal Tanti was dissolved, the learned Presiding Officer Principal Judge, Family Court was not justified in awarding the maintenance amount of Rs.3000/- to opposite party no. 2.

9. A plea has been taken on behalf of the petitioner that when the first witness on behalf of the petitioner was deposing on 18.03.2015, the opposite party no. 2 side acted very cunningly in order to dupe the petitioner, they offered a compromise to which the petitioner agreed and for this reason further examination of the witnesses of the petitioner was deferred to 03.04.2015. A negotiation started between the parties which ultimately failed. Thereafter the witness of the petitioner had migrated to Assam, hence, he could not be produced in course of hearing. It is submitted that the petitioner had filed an application for recall of the order of closure of his evidence but the same was not allowed.

10. On these grounds, the impugned judgment has



been sought to be challenged.

11. On the other hand, learned counsel for the opposite party no. 2 has opposed the revision application. It is submitted that in the learned court below, the opposite party no. 2 had produced altogether four witnesses. PW-1 happened to be the opposite party no. 2 herself who has admitted solemnization of her marriage with one Indal Tanti but at the same time she has stated that the said marriage was dissolved. This witness has stated that the petitioner had solemnized marriage with her after kidnapping her. In the said marriage with the petitioner and the opposite party no. 2, the *Mukhiya*, *Sarpanch* and the parents of the opposite party no. 2 and other relatives had participated. She had earlier filed a criminal case about torture and dowry demand. PW-2 is the mother of the opposite party no. 2 who has also supported the factum of marriage and has stated that the marriage was solemnized in the year 2008 and ceremony was held at Karpuri Asthan. PW-3 and PW-4 are the other two witnesses who have supported the case of the opposite party no. 2. On the point of earning of the opposite party no. 2, PW-4 has supported the opposite party no. 2 saying that she somehow maintained herself as a maid-servant.

12. It is further stated that on behalf of the husband-



petitioner, only one witness, namely, Sri Lal Tanti came in the dock but later on, this petitioner failed to adduce further evidence.

13. Learned counsel for the opposite party no. 2 submits that on the face of the uncontroverted materials present on the record, the learned Principal Judge, Family Court, Begusarai has not committed any error in awarding a maintenance amount of Rs.3,000/- per month. He has also pointed out towards certain documents, certified copies of which were proved in the learned court below. One of those documents is the certified copy of the Complaint Case bearing No. 2520 of 2011 filed by the opposite party no. 2 against this petitioner and another copy is the Complaint Petition bearing Case No. 1926C of 2008 wherein the father of the petitioner, namely, Sri Lal Tanti had compromised with opposite party no. 2 and others. A *Panchanama* in manuscript indicating dissolution of marriage between Indal Tanti and the opposite party no. 2 was also proved.

14. Having heard learned counsel for the petitioner and learned counsel for the opposite party no. 2 as also learned APP for the State, this Court finds that in paragraph '8' of the impugned judgment, the learned Principal Judge, Family Court,



Begusarai has categorically recorded that in the first paragraph of the petition filed by the opposite party no. 2 (bearing Case No. 2520/2011), he has admitted his marriage with the petitioner in the year 2008. The wife is referred the petitioner and husband is opposite party no. 2 in the learned court below. The learned court has further noticed the kind of allegations which were made in the complaint and thereafter proceeded to consider the evidences which were available on the record. The learned court has considered the photographs and other documentary evidences which were on the record and came to a conclusion that the *Panchanama* is a document which is suggesting that people of the locality approved dissolution of marriage and the first husband of the opposite party no. 2 had never staked his claim against her. The learned court came to a conclusion on the basis of definite and acceptable materials that the status of the petitioner remained that of a duly wedded wife of the opposite party no. 2 and the same cannot be denied.

15. On the quantum of maintenance, the learned Principal Judge has considered the material and found that the claim of the wife-petitioner that her husband had 7-8 *bighas* of agricultural land and he had an annual income of Rs.5,00,000/- could not be demolished by the husband-petitioner on the basis



of any evidence. This Court finds that the learned court below has awarded a meager sum of Rs.3,000/- per month which hardly comes to Rs.100/- per day.

16. In the case of **Anju Garg and Another versus Deepak Kumar Garg** reported in **2022 SCC Online SC 1314**, the Hon'ble Supreme Court has held that it is the bounden duty of a husband to maintain his wife. If he is an able-bodied person, he has to maintain his wife by doing physical labour also.

17. In the facts of the present case, this Court finds that a sum of Rs.3,000/- per month cannot be said to be an exaggerated amount and there is no reason as to why this Court would interfere with the quantum of maintenance. The learned court has rightly allowed a litigation cost of Rs.15,000/- in lump-sum and even on that count, no interference is required.

18. In totality, this Court finds no illegality in the impugned judgment. This revision application has no merit. It is dismissed.

19. Considering that the revision application has remained pending in this Court for about six years and learned counsel for the petitioner is unable to say as to whether the petitioner has been paying the maintenance amount or not, this



Court is of the considered opinion that if the petitioner has not paid the maintenance amount and the cost of litigation as per judgment impugned in this revision application, he would be liable to pay the entire arrears and current maintenance together with an additional amount of Rs.25,000/- within a period of one month from the date of receipt/production of a copy of this order.

20. The learned Principal Judge, Family Court, Begusarai shall proceed to execute the impugned judgment as expeditiously as possible.

(Rajeev Ranjan Prasad, J)

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