

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.99 of 2017

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

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Shamim Parwez @ Md. Shamim Parwez, (Head Clerk), Biasy Block, resident of village Tarabari, P.S. and District Purnea, at present, Baisy Block, P.S. Baisy, District Purne

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Naushad Begum, wife of Shamim Perwez, resident of Tarabari, at present, P.O. Thia Bazar, P.S. Pothia, District Kishanganj

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Diwakar Sinha
For the Respondent/s : Mr.Md. Sufiyan

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

10 25-09-2023 1. The present revision application has been filed by the petitioner, who is the husband of Opposite Party No. 2, against the order, dated 28.10.2016, passed by learned Principal Judge, Family Court, Kishanganj, in Maintenance Case No. 701 of 2006/Trial No. 227 of 2015, by which the maintenance case filed by the Opposite Party No. 2 has been allowed and the petitioner-husband has been directed to pay the Opposite Party No. 2 a sum of Rs. 5,000/- per month and Rs. 3,000/- per month to the daughter of the Opposite Party No. 2 till her marriage as maintenance from the date of filing of the maintenance application. The learned Family Court has



further directed that the amount of maintenance shall be payable by the petitioner in the first week of every month and the arrears of maintenance amount shall be paid by the petitioner in 24 equal instalments, along with the present amount of maintenance.

2. As per the case of the Opposite Party No. 2, she was married with the petitioner according to Islamic shariat about 15-16 years back and after that she lived properly for only 3-4 months and thereafter her husband and his family members started demanding dowry. The family members of the petitioner in greed of dowry arranged second marriage of the petitioner with one Guddi @ Kahkasha Dukhatar, daughter of Jassinuddin, and after second marriage of the petitioner, the torture upon Opposite Party No. 2-wife became severe and after birth of a female child of the Opposite Party No. 2, the petitioner and his family members stopped proper food and clothes to them and on 22.10.2002, the Opposite Party No. 2 was assaulted by the petitioner and his second wife and drove her out from her matrimonial home. The Opposite Party No. 2 was compelled to file a complaint case in the Court of learned Chief Judicial Magistrate,



Kishanganj. The Opposite Party No. 2 is leading her life with her minor daughter at her parental house at Pothia Bazar. The parents of the Opposite Party No. 2 are very poor and they are unable to support the Opposite Party No. 2. The Opposite Party No. 2 is at the verge of starvation/penury.

3. The further case of the Opposite Party No. 2 is that the petitioner is a Government employee and earns a handsome amount as salary. The petitioner is also the owner of two houses, situated at Islampur and Kishanganj and receives rent of Rs. 20,000/- from the said two houses. Apart from the above, the petitioner earns Rs. 10,000/- per month from agriculture.
4. The petitioner appears in the maintenance case and during reconciliation, the petitioner denied the marriage. Subsequently thereafter, a written statement was filed by the petitioner, stating therein that the marriage of the petitioner with the Opposite Party No. 2 was not solemnized and he never lived with Opposite Party No. 2 as husband and wife. He has accepted his marriage with Guddi @ Kahkasha Dukhatar. The petitioner has accepted that the Opposite Party No. 2 has filed a complaint case,



bearing Case No. C1078 of 2002 on 22.02.2002 in the Court of learned Chief Judicial Magistrate, Kishanganj, in which the learned Court has taken cognizance of the offences punishable under Sections 323 and 498-A of the Indian Penal Code. It is the further case of the petitioner that the Opposite Party No. 2 is running a beauty parlour at Islampur Bazar and the present maintenance case has been filed in order to harass and humiliate the petitioner with ulterior motive.

5. Both the parties adduced their evidence, both oral as well as documentary, before the learned Family Court. Learned Family Court has framed issues, including the issues as to whether the Opposite Party No. 2 is the married wife of the petitioner and whether the Opposite Party No. 2 is unable to maintain herself and her daughter.
6. Learned Counsel for the petitioner submits that the Opposite Party No. 2 is not the legally wedded wife of the petitioner. The petitioner was a Panchayat Secretary and has now retired. He further submits that none of the witnesses have supported the fact of marriage nor there is any 'Nikahnama' and the wife of the petitioner is earning by running a beauty parlour.



7. I have heard learned Counsel for the petitioner and have gone through the materials available on record, including the impugned order.
8. The learned Family Court has considered the evidence of both the parties and while considering the evidence of the petitioner, who was examined as O.P.W. 4, the learned Family Court has recorded that during cross-examination, this witness has admitted in para 5 that he is known with the Opposite Party No. 2 since 1990. This witness has further admitted in para 6 that Opposite Party No. 2 has filed a case for dowry and he has been convicted in that case and his conviction has also been upheld by the appellate court. He has further admitted that during trial of the criminal case, under Section 498-A of the Indian Penal Code, a petition has also been filed on behalf of the daughter of the Opposite Party No. 2, namely, Muskan, for DNA test to ascertain her paternity, but this witness-petitioner has refused to undergo DNA test. The documentary evidence was also produced on behalf of the Opposite Party No. 2 to prove her relationship with the petitioner and out of these documents, the certified copy of the judgment passed in Case No. 1079C of 2002,



shows that the complaint case was filed by Opposite Party No. 2 against the petitioner for the offences under Sections 323 and 498-A of the Indian Penal Code and in that case, the petitioner has been convicted by the learned Trial Court. The judgment has been marked as Exhibit 1. The other document produced by the Opposite Party No. 2 is the certificate of birth of her daughter, in which the name of the father has been entered in the register is that of the petitioner. Exhibit 3 is the pulse-polio card issued in the year 2000 and it also shows that the father's name of the daughter of Opposite Party No. 2 is Md. Perwez.

9. After considering all the evidence, both oral as well as documentary, the learned Family Judge has come to the conclusion that though the Nikahnama was not produced, but on the basis of other materials and statement of the witnesses, conclusion can be drawn that a function of 'Nikah' had been organized. These circumstances are sufficient proof of 'Nikah'.
10. Exhibit 1, which is the judgment passed by the learned Trial Court, in Complaint Case No. 1078C of 2002, is not the proof of marriage (Nikah), but it can be considered co-laterally with the facts relied by the learned Trial Court



and the petitioner has also admitted that during trial of the criminal case, Muskan (daughter of Opposite Party No. 2) had appeared and has filed a petition for DNA test and the denial of the petitioner to undergo the DNA test put a question mark on the petitioner himself and such conduct of the petitioner is sufficient to draw adverse inference against the petitioner.

11. Exhibit 2 was also considered by the learned Family Court, which has come to the conclusion that Exhibit 2 shows that just after few days of birth of the daughter of Opposite Party No. 2, the information has been recorded in the register of local area (Islampur Municipality of Islampur of Uttar Dinajpur) and the name of the father of daughter of the Opposite Party No. 2 has been recorded in the register as Md Shamim Prawez, i.e. the petitioner.
12. From Exhibit 3, which is the pulse-polio card, it also appears that the same was created in the year 2000, which shows that the name of the petitioner has been recorded as husband of the Opposite Party No. 2.
13. As such, the factum of marriage between the parties has been accepted by the learned Family Court by holding that in the petition, under Section 125 of the Code of



Criminal Procedure, 1973, strict proof of marriage is not imperative and all that is required to be shown is that there has been a marriage and inference of marriage can be drawn from cohabitation of the parties to the proceeding. The Opposite Party No. 2 has successfully proved the circumstance of marriage and, therefore, there shall be presumption of marriage. Further, the paternity of the daughter of the Opposite Party No. 2 also supports the fact that the Opposite Party No. 2 is the wife of the petitioner and, accordingly, the learned Family Court, decided the first issue regarding the validity of the marriage in favour of the Opposite Party No. 2.

14. So far as income of the petitioner is concerned, it is an admitted position that the petitioner is Government servant and on the basis of the deposition of the petitioner (paragraph 5) before the learned Family Court, the learned Family Court has come to the conclusion that the petitioner was getting Rs. 32,000/- per month and considering the liability of the petitioner, the learned Family Court has awarded a sum of Rs. 5,000/- and Rs. 3,000/- to the Opposite Party No. 2 and her daughter respectively.



15. On the point that the Opposite Party No. 2 is running a beauty parlour, the learned Family Court has come to the finding that the deposition of the petitioner is vague and is not sufficient to establish the fact that the Opposite Party No. 2 has been earning by running a beauty parlour.
16. The Supreme Court, in the case of **Dwarika Prasad Satpathy v. Bidyut Prava Dixit**, reported in **(1999) 7 SCC 675**, has held that validity of the marriage for the purpose of summary proceedings under Section 125 of the Code of Criminal Procedure, 1973, is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceedings is not as strict as is required in a trial of offence under Section 494 IPC. If the claimant in proceedings under Section 125 of the Code succeeds in showing that she and the respondent have lived together as husband and wife, the court can presume that they are legally wedded spouses, and in such a situation, the party who denies the marital status can rebut the presumption.
17. In the present case, the petitioner has not disputed the paternity of the child and has also refused to undergo DNA test, for which the learned Family Court has rightly



drawn adverse inference against the petitioner. Further, other contemporaneous documents, viz. Birth certificate of the daughter of the Opposite Party No. 2 as well as pulse-polio card, issued in the year 2000, produced by the Opposite Party No. 2 are such piece of evidence which go to show that the petitioner and the Opposite Party No. 2 were husband and wife.

18. In view of the aforesaid discussions and the finding arrived at by the learned Family Court, this Court is of the opinion that the order of maintenance cannot be said to be a perverse order and the learned Family Court has exercised its jurisdiction properly and has not committed any material irregularity.

19. This application is, accordingly, dismissed.

AFR/
Prabhakar Anand/-

(Anil Kumar Sinha, J.)

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