

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.777 of 2016

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

Babu Shah @ Bablu Shah Son of Md. Mustaque Shah, Resident of Village- Barki Takia (Rasalpur) P.S.-Chandauti, District- Gaya. Petitioner/s
Versus

1. Shabnam Khatoon Wife of Babu Shah @ Bablu Shah.
2. Abu Hamza Son of Babu Shah @ Bablu Shah, Resident of Village- Barki Takia (Rasalpur), P.S.- Chandauti, District- Gaya presently residing with her father at Maika i.e. Village Barki Takia (Rasalpur) P.S.-Chandauti, District-Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Syed Alamdar Hussain, Adv.
	:	Mr. Shashi Bhushan Kumar, Adv.
For the Respondent/s	:	None

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 11-05-2023

Heard learned counsel for the petitioner.

It transpires to this Court that vide order dated 25.04.2023 last opportunity was granted to the opposite party No.1 & 2 to defend their stand in this case but no one appeared, as such, this Court has no option but to pass order only after hearing the petitioner.

The present Cr. Revision Application has been filed for setting aside the order dated 18.04.2016 passed by Principal Judge, Family Court, Gaya, by which, the application filed by opposite party was allowed under Section 125 of Cr.P.C. in Miscellaneous Case No. 29 of 2009 by which it was directed to the petitioner to Rs.6,000/- and Rs.2,000/- per month to the opposite party Nos. 1 & 2 respectively as maintenance allowance



from the date of order. It is also directed that the maintenance allowances shall be payable to the opposite party No.2 till attaining his age of majority.

Learned counsel for the petitioner submits that a well contested order has been passed by the Principal Judge, Family Court, Gaya upon hearing both the parties and their evidences. He further submits that it is the consistent stand of petitioner that opposite party No.2 (the alleged child) is not from the petitioner. He also submits that upon challenge made by the petitioner, the court has ordered for D.N.A. test for which the opposite party No.1 was initially ready. He further submits that petitioner was never came in physical contact with opposite party No.1, the petitioner is residing in Delhi and opposite party No.2 has never visited to Delhi. Counsel submits that even after the order passed by the court for D.N.A. test, opposite party No.1 was not ready and refused for the same. He further submits that Exhibit-E is the report of Forensic Science Laboratory, Hyderabad from which it will become clear that opposite parties were not ready for D.N.A. test.

Counsel submits that since upon initial offer that she is ready for D.N.A. test, thereafter she refused for the same then in that case an adverse inference ought to be drawn against the wife/ opposite party No.1 and this is the correct position of law.



When inference shall be drawn meaning thereby opposite party No.1 is not the wife of petitioner and, therefore, it automatically proves that opposite party No.1 was in adulterous relation with someone and hence Section 125(4) of Cr.P.C. debars to the opposite party No.1 for seeking any maintenance.

Counsel for petitioner, therefore, submits that neither opposite party No.1 nor opposite party No.2 are entitled for any maintenance.

Upon going through the records it transpires that there are certain part of the matter which is admitted from the pleadings and evidences of petitioner itself before the Principal Judge, Family Court, firstly that petitioner and opposite party No.1 are admittedly husband and wife, secondly that petitioner is residing at Delhi and doing business either by selling readymade or doing business on *thela gadi*. It also transpires from the record that opposite party No.1 has refused for D.N.A. test, therefore, adverse inference ought to be drawn but this adverse inference shall be drawn only up to that extent that no benefit should be granted to opposite party No.1 but inference cannot be drawn up to that extent that opposite party No.1 is in adulterous relation with someone because conclusive prove of D.N.A. test is not present.

It also transpires to this court that the point of



ascertainment of earning is not clear but it is admitted that petitioner and opposite party No.1 are husband and wife and under Section 125 of Cr.P.C. wife is entitled for maintenance and, therefore, this Court is also of the view that wife is entitled for maintenance from her husband. The present case is of the year 2017 whereas presently 2023 is going on and Rs.6,000/- is a petty amount and, therefore, this Court is not interfering on this issue and directs the petitioner that he shall pay Rs.6,000/- per month to his wife i.e. opposite party No.1 and this Court only modified in the order that particularly when opposite party No.2 is not ready for D.N.A. test then adverse inference shall be drawn and on the basis of that adverse inference direction for granting maintenance of Rs.2,000/- to opposite party No.2 is hereby set-aside.

With these directions, the present Cr. Revision Application is hereby partly allowed and partly dismissed.

(Dr. Anshuman, J.)

Ritik/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

