

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.645 of 2018**

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

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Md. Javed Alam, S/o Late Minhaj Uddin, Resident of Village- Urain, P.S.-  
Kajra, District- Lakhisarai.

... .. Petitioner/s

Versus

Fauzia Nishat, W/o Md. Javed Alam, D/o Md. Asraf Nishat, Resident of Shah  
Colony, Shah Zubair Road, P.S.- Kotwali, District- Munger.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Parmanand Pd. Nr. Sahi, Advocate  
For the Respondent/s : Mr. Ashok Kumar Jha, Advocate  
Mr. Jitendra Kumar, Advocate  
Mr. Sunil Kumar Pandey, APP

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**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**ORAL ORDER**

3      18-12-2023                      The instant revision is fixed for admission.

2. The revisional application has been filed,  
assailing the order dated 9<sup>th</sup> of May, 2018, passed in  
Maintenance Case No. 30 of 2015, by the learned Principal  
Judge, Family Court, Munger.

3. On perusal of the impugned order, it appears  
that the marriage between the parties is not disputed.



4. It was the case of the Opposite Party / wife that after marriage, she was subjected to physical and mental torture on demand of dowry in such a manner that she had to be undergone abortion. Thereafter, the petitioner and his family members drove her out.

5. The learned Advocate for the petitioner submits that there are two grounds for which the instant revision has been filed. First, the Opposite Party has failed to prove that she was driven away from her matrimonial home and secondly, the Opposite Party failed to produce any document relating to income of the petitioner, and the Trial Court without considering the income of the petitioner, passed an order directing the petitioner to pay maintenance at the rate of Rs. 15,000/- per month.

6. It is submitted by the learned Advocate for the Opposite Party, on the other hand, that the petitioner and his family members drove her away from her matrimonial home.

7. It is already on record that the petitioner is employed in Dubai, United Arab Emirates and he earns a huge sum of money from his employment. He has the



financial capacity to pay a sum of Rs. 15,000/- and the impugned order is not bad in law.

8. Having heard the learned counsels for the parties, this Court likes to record that a proceeding under Section 125 of the Cr.P.C. is a summary proceeding. It is the duty of the wife / Opposite Party to prove that she has been refused and neglected by her husband in maintaining her. When a lady is assaulted in her matrimonial home in such a manner that she requires to have abortion, even if the lady leaves her matrimonial home after the occurrence, the Court has every reason to hold that it is absolutely lawful for the wife to deny residence in her matrimonial home in association with her husband. Therefore, the first point regarding refusal and negligence on the part of the petitioner has been proved in the Trial Court. Moreover, the petitioner has employment at United Arab Emirates. The employment paper has been marked as Exhibit-2. After getting such employment, he went to Dubai and the E-ticket receipt has been marked as Exhibit-3. Therefore, the learned Advocate submits, without considering the record, that the petitioner failed to produce any document with regard to



employment of the petitioner.

9. Therefore, it is presumed that the petitioner has substantial income. It is not denied that he passed Engineering from an IIT.

10. By filing a rejoinder, the present petitioner submits that Opposite Party is a Tutor and she earns Rs. 12,000/- per month. However, in course of hearing, it has come from the evidence of Opposite Party that she denied her academic qualification as a Graduate having good income from Tuition. Therefore, from the cross-examination on behalf of the petitioner, it appears that the Opposite Party is not a Tutor and she earns some money from Tuition.

11. I have already held that it is justified for the Opposite Party to leave her matrimonial home after such amount of assault which compelled her to abort. Even assuming that the Opposite Party earns some money from private tuition, the petitioner is under an obligation to pay maintenance so long the Opposite Party is his legally married wife.

12. The learned Trial Court fixed a sum of Rs.



15,000/- per month as maintenance payable by the petitioner to the Opposite Party.

13. It is submitted by the Advocate appearing for Opposite Party that till date, the petitioner has not paid any farthing.

14. Considering the fact that the Opposite Party might have earned some money towards tuition, this Court is of the view that an amount of Rs. 12,000/- per month will be just and proper maintenance under the facts and circumstances of the case.

15. In view of such circumstances, the petitioner is directed to pay maintenance at the rate of Rs. 12,000/- per month from the date of the order passed by the Trial Court, i.e., from the month of May, 2018. The petitioner is directed to pay present maintenance within 10 of each succeeding month. He is also directed to pay the arrears maintenance within 15 monthly installment from the month of January, 2024 within 10<sup>th</sup> and thereafter he go on paying the arrears maintenance till its recovery within 10<sup>th</sup> of each succeeding month.

16. The impugned order dated 9<sup>th</sup> of May, 2018



passed by the Principal Judge, Family Court, Munger is modified to the above extent.

17. The instant revision is partly allowed on contest.

**(Bibek Chaudhuri, J)**

skm/-

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