

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.995 of 2016

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

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Afsar Ali Son of Amzad Hussain Miya Resident of Village- Jamunbhar, P.S.-
Adapur, District- East Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Rokhshana Khatoon daughter of Ansarul Haque, wife of Afsar Ali
3. Shiva Khatoon daughter of Afsar Ali
4. Hashiba Khatoon daughter of Afsar Ali
5. Rahima Khatoon daughter of Afsar Ali

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sunil Kumar No.III
For the Respondent/s : Mr.Sri Awadhesh Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

4 23-02-2023 Heard learned counsel for the petitioner.

This criminal revision application has been filed against order dated 22.08.2016 passed by learned Principal Judge, Family Court, East Champaran, Motihari in Maintenance Case No. M361 of 2019 whereby and whereunder the learned Principal Judge has allowed the petition filed by opposite parties under Section 125 Cr.P.C. and directed the petitioner to pay Rs. 5,000/- per month to opposite party no. 2 to 5, who are wife and daughters of petitioner, as maintenance.

It is submitted by learned counsel for the petitioner that without assessing the income of the petitioner and



considering any documentary evidence placed by petitioner, the impugned order has been passed. It is further submitted that the court below has failed to examine Section 278 of Mohammedan Law wherein it is mentioned that maintenance amount cannot be more than Rs. 500/ per month and passed the impugned order, which is contrary to law and is fit to be set aside.

Section 278 of Mohammedan Law runs as follows:-

"278. Order for maintenance.- If the husband neglects or refuses to maintain his wife without any lawful cause, the wife may sue him for maintenance, but she is not entitled to a decree for past maintenance, unless the claim is based on a specified agreement. Or, she may apply for an order of maintenance under the provisions of the Code of Criminal Procedure, 1898 (sic), section 488 (sic) in which case the court may order the husband to make a monthly allowance in the whole for her maintenance not exceeding five hundred rupees".

It is settled law that quantum of maintenance cannot be decided by the personal law of the parties. Personal law of the parties is relevant for deciding the validity of marriage. Reliance can be made in this regard upon the judgement of the Apex Court in the case of ***Savitaben Somabhai Bhatiya vs. State of Gujrat & others*** reported in ***(2005) 3 SCC 636***.



I have carefully perused the impugned order. The monthly maintenance allowance of Rs. 5,000/- per month to wife and daughters of petitioner in this age of high inflation cannot be said to be on higher side or excessive in the facts and circumstances of the case as mentioned in the impugned order. The findings recorded by the court below are based on evidence.

I do not find any illegality or irregularity in the impugned order, which requires any interference by this Court.

Accordingly, this criminal revision application stands dismissed.

(Prabhat Kumar Singh, J)

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