

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1008 of 2016

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

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Mukutdhari Singh Son of Late Aklu Singh @ Aklu Mahto, Resident of
Village Dharmagatpur Bathua, P.S.- Pusa, District- Samastipur.

... .. Petitioner/s

Versus

Raj Kumari Devi Wife of Bishundeo Singh @ Bishuni Singh, Resident of
Village- Bishunpur Bathua, P.S.- Pusa, District - Samastipur wrongly claiming
as wife of Mukutdhari Singh of Village and P.O.- Dharmagatpur Bathua, P.S.-
Pusa, District- Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhay Shankar Singh, Adv.
For the Respondent/s	:	Mr. Ajay Kumar No.2, APP
For the Informant/s	:	Mr. Ranjan Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 13-03-2023

Let the defect(s), if any, be removed within two
weeks from today.

Heard learned counsel for the petitioner and learned
A.P.P. for the State and counsel for Opposite Party present.

The present Criminal Revision has been filed
against the order dated 22.08.2016 passed by learned Principal
Judge, Family Court, Samastipur in Maintenance Case No.
16/2005 by which he has allowed the maintenance petition
dated 25.08.2005 filed by the O.P. under Section 125 of the
Cr.P.C. and directed the petitioner to pay maintenance allowance
of Rs.5000/- per month to the present O.P.

Counsel for the petitioner submits that the impugned order dated 22.08.2016 in Maintenance Case No. 16/2005 is illegal and barred under law due to the reason that the dispute of maintenance between the petitioner and O.P. has already been settled up to Hon'ble High Court vide order dated 31.03.1981 passed in Cr. Rev. No. 82/39 of 1979/81. There was no challenge of the said order and as such the said order acquires finality. The order dated 31.03.1981, passed in Cr. Rev. No. 82/1979 and 39/1981 has been passed against the final order dated 28.05.1979 passed in Misc. Case No. 15 of 1976/ T.R. No. 1752 of 1979 under Section 125 of Cr.P.C. between Mukutdhari Singh Vs. Raj Kumari Devi.

Learned counsel for the petitioner submits that the said Raj Kumari Devi had filed another Maintenance Case No. 16/2005 before the Learned Principal Judge Family Court (Raj Kumari Devi Vs. Mukutdhari Singh). The said maintenance case was decided in favour of Raj Kumari Devi vide order dated 05.09.2006.

Being aggrieved and dissatisfied with the said order, the said Mukutdhari Singh has preferred Cr. Misc. No. 53605 of 2006 before this Hon'ble Court and vide order dated 18.09.2007. The order dated 05.09.2006 passed in Maintenance Case No.16 of 2005 has been quashed and matter is remitted back to the Court Below for passing fresh order. In the light of the observation that the point of maintenance has already

decided vide judgment dated 31.03.1981 passed in Cr. Rev. No. 82/1979 and 39/1981.

Upon remand by this Hon'ble Court, the Principal Judge Family Court has passed fresh order in Maintenance Case No.16 of 2005 and again decided this case in favour of the present O.P. and directed to pay maintenance allowance of Rs. 5000/- per month to her.

Counsel for petitioner submits that O.P. No.2 has filed 2 maintenance application, first application, she has filed in the year 1976 being Misc. Case No. 15 of 1976 in which she lost and the order passed was challenged in Cr. Rev. No. 82/1979 and 39/1981 and question of maintenance has been decided by the Trial Court, is set aside and this Cr. Revision was allowed in the year 1981.

After lapse of about 24-25 years, she has again filed the Maintenance Case No. 16 of 2005 and in the said maintenance case, O.P. No.2 has suppressed material facts.

Counsel for the petitioner submits that once the maintenance application has been acquired finality in 1981, it cannot be re-opened 24-25 years again and if it has been opened, the Trial court must have to discuss about it in the order sheet, the grounds on which he has entered in the question of maintenance which acquires finality in the year 1981 and after 24-25 years, this question was again raised. Therefore, he submits that the question of maintainability has been decided in

his favour twice by the Revisional Court and both the Revisional Courts have been decided in his favour.

Counsel for the petitioner submits that about the story of litigation which continues from 1976-1981 has been completely suppressed by the O.P. Counsel for O.P. submits that O.P. No.2 has explained each and everything to his counsel but under what circumstances, he has not described those things in her maintenance petition of 2005 cannot be explained by the O.P. She is illiterate lady and only she can put her signature but not in a position to understand the technicalities of law. Counsel submits that whatever she has explained in the petition is correct.

Upon going through the record and considering the argument, the factual matrix is crystal clear that O.P. has filed maintenance application in the year 1976 which acquires finality in the year 1981. After a gap of the period of 24-25 years, she has filed another Maintenance Application No. 16/2005 under Section 125 Cr.P.C. in which the story of earlier litigation has not been indicated. It is also clear from Annexure-4 series that in reply to the Maintenance Application No. 16/2005, the present petitioner had explained each and everything particularly about the order of Revision Case No. 16/2005 which has been tested by this Hon'ble Court vide order dated 18.09.2007 passed in Cr. Misc. No. 53605 of 2006 by which the order dated 05.09.2006 in Maintenance Case No 16/2005 has been quashed and matter

was remitted back considering judgment dated 31.03.1981 passed in Cr. Rev. No. 82/1979 and 39/1981.

I am of considering view that once the maintenance litigation has been settled and acquires finality in the 1981 then, after lapse of about 24-25 years raising the same litigation under the same provision of law by the same party against the same party is basically an illegality which is necessary to be corrected.

In this view of the matter, the order dated 22.08.2016 passed by learned Principal Judge, Family Court, Samastipur in Maintenance Case No. 16/2005 is set aside and the Revision Application is **hereby allowed**.

(Dr. Anshuman, J.)

prakashmani/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	