

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.845 of 2016

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

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Mohan Prasad Gupta S/o Shiv Prasad Gupta Resident of Village-Barun Bazar,
P.S. Barun District Aurangabad-Bihar.

... .. Petitioner

Versus

1. The State of Bihar
2. Kalawati Devi W/o Mohan Prasad Gupta and D/o Laxman Sao Resident of Village- Barun Bazar, P.S. Barun District-Aurangabad
3. Raj Kumari D/o Mohan Prasad Gupta Resident of Village- Barun Bazar, P.S. Barun District Aurangabad-Bihar.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Bhaskar Shankar, Advocate
For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 01-12-2023

Heard learned counsel for the petitioner. Despite service of notice on Opposite Party Nos. 2 and 3, they have chosen not to appear before this Court.

2. This revision application has been preferred for setting aside the order dated 29.06.2016 passed by learned Principal Judge, Family Court, Aurangabad in maintenance case being Miscellaneous Case No. 10 of 2010 whereby and whereunder the petitioner has been directed to pay maintenance of Rs. 3,000/- per month and Rs. 2,000/- per month to Opposite Party Nos. 2 and 3 respectively from the date of filing of the application i.e. 10.02.2010.

3. It appears from the pleadings available on the record

that the Opposite Party No.2 filed the maintenance case claiming that she is legally wedded wife of the petitioner and Opposite Party No.3 is the daughter born out of the wedlock between the petitioner and the Opposite Party No.2 which took place in the year 1980. It is stated that the petitioner had got his first wife with whom he had no issue but after marriage with the Opposite Party No.2, children were born to the first wife whereafter the behaviour of the petitioner changed towards Opposite Party No.2 and he started treating the Opposite Party No. 2 with cruelty. The Opposite Party No.2 lodged a criminal case being Barun P.S. Case No. 235 of 2009 and another case being Barun P.S. Case No. 312 of 2009 registered for the offences alleged under Sections 498A and 323/34 of the Indian Penal Code. The Opposite Party Nos. 2 and 3 claimed that they were unable to maintain themselves whereas the present petitioner is a rich man having a rice mill and shop and he earns rent from his properties.

4. In the court of learned Principal Judge, the present petitioner appeared and filed his show cause. He claimed that the application under Section 125 Cr.P.C. was not maintainable as the marriage between Opposite Party No.2 and the petitioner was not a legal and valid marriage and it was not solemnised according to Hindu rites and customs. The petitioner claimed that he was married to one Prabhawati Devi and has been blessed with six sons

from the wedlock. He contested the case of the Opposite Party No.2 as a totally false case and submitted that his eldest son is of 25 years.

5. The parties adduced their respective evidences in the Family Court, the wife (Opposite Party No.2) adduced six witnesses whereas the husband (the petitioner) examined five witnesses in support of their respective cases.

6. The learned Principal Judge, Family Court having examined the evidences brought on the record came to a conclusion that the applicant-Opposite Party No.2 is residing in the house of Opposite Party-petitioner as his wife and the Opposite Party No.3 (applicant no.2 in the court below) is daughter of Opposite Party No.2 and both the applicants-Opposite Party Nos. 2 and 3 are unable to maintain themselves.

7. Learned counsel for the petitioner has assailed the impugned order on the following grounds:

(i) The specific plea of the present petitioner that the Opposite Party No. 2 is not his wife has not at all been considered by the learned Principal Judge, Family Court, Aurangabad. During pendency of the revision application before this Court, the petitioner has obtained a decree in Matrimonial Case No. 9 of 2011 wherein it has been declared by the competent court that the Opposite Party No.2, Kalawati Devi is not his legally wedded

wife, however, the learned court has held that the petitioner is unable to prove that Opposite Party No.3 is not his daughter.

(ii) The Opposite Party No.2 challenged the judgment and decree dated 05.11.2018 passed by learned Principal Judge, Family Court in Matrimonial Case No. 9 of 2011 by filing Miscellaneous Appeal being M.A. No. 1049 of 2018 which has been dismissed by the Hon'ble Division Bench of this Court vide judgment dated 25.09.2023.

8. This Court has heard learned counsel for the petitioner and perused the records. By efflux of time, some developments have taken place wherein a declaration to the effect that the applicant no.1-Opposite Party No.2 is not a legally wedded wife of the petitioner has been made by a competent court of law in Matrimonial Case No. 09 of 2011. This declaration of the competent court was challenged by the Opposite Party No.2 but the said challenge failed in Miscellaneous Appeal No. 1049 of 2018. While going through the judgment of the Hon'ble Division Bench, this Court finds that paragraph '18' and '19' of the judgment would cover the subject matter of the present case as well. Paragraph '18' and '19' are therefore being extracted hereinbelow for a ready reference:-

“18. We find no merit in the contention of learned counsel for the appellant/opposite party no.1 that the learned Family Court went beyond pleadings and

passed the orders which were not at all required. The learned Family Court when it declared that the respondent no.2/opposite party no.2 is entitled to receive maintenance from the respondent no.1/petitioner, it was only stating what was in the statutes specifically Section 20 of the Hindu Adoptions and Maintenance Act, 1956. The said declaration is merely stating the obvious. In a plethora of the decisions, the Hon'ble Supreme Court has held the illegitimate children are also entitled to get maintenance and we do not find that the learned Family Court committed any error if it went to declare the entitlement of the respondent no.2/opposite party no.2 for getting maintenance from the respondent no.1/petitioner.

19. At the same time, there was no occasion for the learned Family Court to declare the entitlement of the appellant/opposite party no.1 to get maintenance from the respondent no.1/petitioner since it has declared that she was not legally wedded wife of respondent no.1/petitioner. If the appellant/opposite party no.1 is not held to be the wife of the respondent no.1/petitioner, in a proceeding for declaration of her matrimonial status, the learned Family Court was not required to adjudicate her entitlement for maintenance in absence of any specific pleadings. So, we do not find any merit in the submission made by the learned counsel for the appellant/opposite party no.1 on this point.”

9. It is crystal clear from the observations of the Hon'ble Division Bench of this Court that the declaration of the learned Family Court saying the Opposite Party No.2 entitled to get maintenance has been held wrong and the Hon'ble Division Bench has not approved the same. So far as the entitlement of Opposite Party No.3 is concerned, Hon'ble Division Bench has

categorically held that the learned Family Court has not committed any error if it went to declare the entitlement of the respondent no.2/Opposite Party No.2 for getting maintenance from respondent no.1/petitioner in the said case. In the present case, the daughter is Opposite Party No.3, thus the impugned judgment insofar as it relates to Opposite Party No.3 survives by virtue of the above observations of the Hon’ble Division Bench of this Court.

10. In result, the impugned order insofar as it relates to applicant no.1-Opposite Party No.2, is set aside. The petitioner would be liable to pay the maintenance amount as awarded to Opposite Party No.3 in terms of the impugned judgment/order keeping in view the observations of the Hon’ble Division Bench. The learned Principal Judge, Family Court shall execute the judgment accordingly.

11. This revision application is partly allowed.

(Rajeev Ranjan Prasad, J)

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CAV DATE	
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