

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1070 of 2016

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

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Amit Mandal @ Amit Kumar Son of Subhash Chandra Mandal, Resident of
Village- Kanp, P.O.- Baliya, P.S.- Rupauli, District- Purnea.

... .. Petitioner/s

Versus

1. Punam Devi W/o Amit Mandal, D/o Sri Harengi Mandal
2. Sagar Kumar Son of Amit Mandal, aged about 4 years (Minor) through his
natural Guardian her mother Punam Devi
Both at present of Village- Pothia, P.S.- Kalka Pathia and District- Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Sinha, Advocate Mr. Shyam Sunder Pandey, Advocate
For the Respondent/s	:	Mr. Bhola Prasad, Advocate Mr. Indrajeet Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 04-04-2023

Heard learned counsel for the petitioner and learned
counsel for the opposite party.

The present criminal revision application has been filed
against the order dated 20.07.2016 passed by the Addl. Principal
Judge, Family Court, Katihar in connection with Maintenance
Case No. 207 of 2012 directing the petitioner to pay a sum of
Rs.4000/- per month to the respondent no.1 and 2 (O.P. No.1
and 2 who are wife and minor son) in the first week of every
month payable from the date of order i.e. from 20th July, 2016.

Counsel for the petitioner submits that the said order
under challenged dated 20th July, 2016 is basically an ex-parte

order. Counsel further submits that admittedly the petitioner was married with respondent no.1 on 04.07.2010 and from this marriage he has one son who is respondent No.2. Counsel further submits that respondent No.1 went to the matrimonial home after few days of the marriage, she used to torture and humiliate the petitioner. Counsel further submits that the petitioner has filed an application for restitution of conjugal right against the wife (respondent No.1) when she has not appeared in this case then petitioner filed an application for restitution of conjugal right bearing Case no. 78 of 2013 before Principal Judge, Family Court, Katihar. The case of the petitioner was allowed and a decree was passed in his favour on 20.06.2016. Counsel further submits that respondent no.1 is not ready to live with the petitioner and therefore, he has filed an Execution Case No. 03 of 2016 in family court but even after every effort respondent No.1 (wife) has not opted to appear in the said case. It is submitted by counsel for the petitioner that the wife (Respondent no.1) had filed a Complaint Case under Sections 323, 406 and 498A of the I.P.C. read with Section 3/4 of the Dowry Prohibition Act. Counsel further submits that not only wife rather her sister also filed another Compliant Case bearing No. 2150 of 2012 in the court of Chief Judicial

Magistrate, Katihar under Sections 302, 406 and 498A of the I.P.C. read with Section 3/4 of the D.P. Act against her husband. Counsel further submits that the petitioner is very much eager to start a new conjugal life with her wife but she refused to live with the petitioner without any reasonable cause and this is one of the ingredient for not paying maintenance under section 125(4) of the Cr.P.C. and as such, he submits that the order passed by Principal Judge, Family Court, Katihar which is under challenge suffers from illegality and need correctness.

Counsel for the petitioner also submits that he admits that respondent No.2 is his son and he is ready to pay maintenance to his son. He himself offered that petitioner is ready to pay Rs.2000/- per month for his son till he become major but so far as the maintenance to the wife is concerned, it is legally barred under section 125(4) of Cr.P.C., 1973.

Counsel for opposite party submits that section 125(4) of Cr.P.C. shall not create any hurdle in payment of maintenance due to the reason that she refused to reside with the husband is not without reasonable cause rather in the evidence it has come the husband due to non-fulfillment of the demand of dowry had not ready to keep his wife and it is due to this reason, she was forced to live in her *Maike*. Counsel further submits that in

Maintenance Case No. 207 of 2012 husband (opposite party) appeared and effort for conciliation/mediation took place. He admits before the trial court that respondents are wife and son but only due to strange relation with his *Sadhu (brother-in-law)* and with an allegation that his wife used to reside in control of his *Sadhu (brother-in-law)*, therefore, he was not ready to met with them.

Upon going through the records of the case as well as hearing argument from both the parties, it transpires to this court that for the purpose of deciding the maintenance case, the lower court has framed two issues and one thing has come in which wife has categorically submitted that if her husband shall keep her with due respect and he changed his behaviour then only she will reside otherwise not. It has also come that husband used to make complain with regard to the family of wife which is not acceptable to her.

Upon going through the findings recorded by the trial court on the basis of the materials available on record, it transpires to me that ingredient of section 125(4) of Cr.P.C. is not available to the petitioner as not living with the husband is not without cause.

In this view of the matter, the benefit of section 125(4) of

Cr.P.C. shall not be granted to the petitioner in the opinion of the Court.

This court is conscious that this order is being passed in the revisional jurisdiction where there is no scope of discussing the entire evidence minutely. The court has to look into the only the legality, correctness and propriety. In legal test about applicability of section 125(4) of Cr.P.C. is concerned this court has already opined in the aforesaid paragraph.

In this view of the matter, I am not inclined to interfere in the order passed by the Addl. Principal Judge, Family Court, Katihar in Maintenance Case No. 207 of 2012. Therefore, the present criminal revision is **dismissed**.

(Dr. Anshuman, J.)

ravishankar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	