

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.228 of 2017

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

Kumari Mamta @ Mamta Kumari W/o Prabhakar Jha, D/o Radhakant Mishra, resident of vill. - Wajitpur, P.S. Kamtaul, Distt. - Darbhanga

... .. Petitioner/s

Versus

Prabhakar Jha S/o Krishna Kumar Jha, Resident of vill. Majhauriya, P.S. Ashok Paper Mill, Kameshwar Nagar, Distt. - Darbhanga

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Kedar Jha, Adv.

For the Opposite Party no.2 : Mr. Prem Kr. Jha, Adv.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL ORDER

8 24-04-2023 Learned counsel for the petitioner present.

Counsel for the petitioner submits that vide order dated 13.04.2023, notice has been accepted as valid service upon opposite party.

Counsel submits that vide order dated 01.12.2022, this Court has observed “ This Court is prima facie convinced that the learned Family Court has committed a grave error by refusing to enforce the order. It is made clear that subject to other and further order of this Court, pendency of this application shall not be any reason available to the learned Family Court, Darbhanga in proceeding against the husband for enforcing the order to recover the arrears of maintenance.”

Counsel for petitioner further submits that the order passed by the Principal Judge, Family Court dated 04.11.2016 in

Supplementary Maintenance Case No.33 of 2000 is illegal and bad in law as it has been passed in gross violation of explanation of Section 125(1)(b) of the Cr.P.C.,1973(Act No.2 of 1974). Counsel submits that the petitioner is the wife and as per law under Section 125(1)(b) of Cr.P.C., the “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not re-married. Counsel submits that the petitioner has not re-married.

Counsel further submits that the order passed by Principal Judge, Family Court that “ So far as maintenance amount due after passing Judgment of Divorce Case No.07/2000 passed on 28.07.2015 since the Order/Judgment is under challenge and pending before the Hon’ble High Court, Patna. As such after receiving the order in connection with Misc. Appeal No.442 of 2015 further follow up action will be taken immediately on receipt of the order of the Hon’ble High Court, Patna.” has been passed in gross violation of provision of law laid down under Section 125(1)(b) of the Cr.P.C. Counsel submits that in view of his argument, the said order be set aside as it is absolutely illegal.

Counsel for O.P. submits that petitioner has already re-married and in the light of Section 125(4) of Cr.P.C., she is

not entitled for maintenance under Section 125(4) of Cr.P.C.

Upon hearing the submissions and going through the position of law, it is clear to this Court that the said Misc. Appeal No.442 of 2015 has been filed by the present petitioner challenging the order passed in the Divorce Case No.07/2000 dated 28.07.2015. If the said misc. appeal shall be allowed in favour of the petitioner then petitioner shall be continued to be wife of the opposite party. If the said misc. appeal shall be dismissed then the petitioner shall be treated as divorcee of the O.P. But in accordance with Clause B of explanation of Section 125 of the Cr.P.C., 1973, the wife and divorcee both are entitled for the maintenance and in this background, stopping the fruits of order passed under Section 125 of Cr.P.C. shall absolutely illegal and unjust and therefore, the order dated 04.11.2016 in Supplementary Maintenance Case No.33 of 2000 is hereby set aside

However, liberty is hereby granted to counsel for O.P. that he is free to file an application under Section 125(4) of Cr.P.C. before the Principal Judge, Family Court, Darbhanga for stopping the maintenance order dated 04.11.2015 and ground has mentioned under Section 125(4) of Cr.P.C.

The Principal Judge, Family Court is directed to do

the needful for execution of the order under Section 125 of Cr.P.C. in accordance with case decided by this Court in **Sarfaraj Alam @ Md. Sarfaraj Vs. State of Bihar & Ors.** reported in **2023(1) PLJR 756**. The Principal Judge, Family Court is also directed that prior to issuance of any process for realisation of the said amount as mentioned above, he shall pass order under Section 125(4) of Cr.P.C. then only proceed further as mentioned above within 30 days from the date of receipt of the order.

With this observation, this Cr. Revision Application is hereby allowed.

(Dr. Anshuman, J.)

prakashmani/-

U		T	
---	--	---	--