

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1386 of 2018

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

=====

Dinesh Mukhiya Son of Mater Mukhiya, Resident of Village Kochgama, P.S.-
Narpatganj, District- Araria.

... .. Petitioner/s

Versus

Sarita Devi Wife of Dinesh Mukhiya, Daughter of Chandeshwari Mukhiya,
Resident of Village- Jagur, P.S.- Triveniganj, District- Araria.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Sharma, Adv

For the Respondent/s : Mr. Anand Mohan Prasad Mehta, Adv

=====

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 13-12-2023 Heard the learned counsel for the petitioner and

the learned counsel for the Respondent.

2. The petitioner is the husband of the opposite party. The opposite party filed an application under Section 125 of the Code of Criminal Procedure praying for maintenance before the learned Principal Judge, Family Court, Araria which was registered as Maintenance Case No. 311 of 2016. The learned Principal Judge, Family Court, Araria by judgement dated 10th of July, 2018, allowed the petition under Section 125 of the Cr.P.C., directing the present petitioner/husband to pay monthly maintenance allowance @ Rs. 5,000/- to the wife/opposite



party herein, from the date of delivery of the judgement within 10th day of every succeeding month. The said order is impugned in the instant revision at the instance of the petitioner on the following grounds:-

i. The learned Trial Judge failed to consider the evidence of the witness on behalf of the petitioner/husband.

ii. The learned Trial Judge failed to consider that the wife/opposite party herein vehemently and willingly left her matrimonial home.

iii. The learned Trial Judge also failed to consider that the wife of the petitioner is having illicit relation with another boy.

iv. The learned Trial Judge also failed to consider that the petitioner/husband is a deliverer and it is not financially possible for him to pay maintenance allowance @ Rs. 5,000/- per month.

3. At the time of hearing, the learned Advocate, on behalf of the petitioner, draws my attention to the evidence of D.W. 1, the petitioner herein. It is pointed out by him that the D.W. 1 stated on oath that the complainant never behaved properly with him, and she used to leave her



matrimonial him on one pretext or the other without the permission of D.W. 1. The evidence of D.W. 1 was corroborated by D.W. 2, Shiv Narayan Sharma, and D.W. 3, Sanjit Mukhiya. It is the grievance of the petitioner that the Trial Judge did not consider the evidence of the above-named D.Ws.

4. This Court likes to record that the Revisional Court does not have the jurisdiction to re-appreciate the evidence on record. It is the jurisdiction of the Revisional Court to see if there is any error apparent on the record which makes the impugned order illegal, inoperative or inappropriate. The propriety of the impugned order can only be looked into on the touchstone of error apparent in the record.

5. It is stated by the opposite party in her evidence as petitioner in the trial Court that she was driven out by her husband from her matrimonial home as she failed to meet the demand for dowry by her husband even after marriage.

6. The said fact was denied by the witnesses on behalf of the husband/petitioner herein by adducing three



witnesses in their examination-in-chief. Therefore, statement of refusal and neglect by the husband of his wife and its denial came on record as statements on oath versus oath.

7. On the contrary, it appears that the witnesses on behalf of the petitioner/husband have deposed in the same tune that the opposite party / wife has illicit relationship with another boy of their village, and therefore, she left her matrimonial home. The said fact has not been proved during trial.

8. On the contrary, such allegation is sufficient for the wife to deny staying with her husband together.

9. The only issue which has not been discussed in the impugned order is the quantum of maintenance and the income of the petitioner. The petitioner has stated on oath that he is a daily labourer. No document has been filed by either of the parties showing the income of the petitioner/husband. Even if I consider that the petitioner is a daily wage labourer, his salary cannot be more than the settled amount under the Minimum Wages Act.



10. In such circumstances, the Court may easily presume that the petitioner earns not more than Rs. 10,000/- or Rs. 11,000/- per month. One-third of the maintenance amount which the opposite party is entitled comes to Rs. 3,000/-.

11. Therefore, the instant revisional application is allowed in part.

12. The order of maintenance passed by the learned Trial Judge is modified, directing the petitioner to pay maintenance allowance to the opposite party no. @ Rs. 3,000/- per month from the date of the order passed by the learned Trial Judge i.e., from 10th of July 2018. The petitioner shall go on paying the current maintenance allowance @ Rs. 3,000/- per month and arrears maintenance allowance to the opposite party within 10th day of each succeeding month.

13. The instant revisional application is thus allowed in part.

(Bibek Chaudhuri, J)

uttam/-

U			
---	--	--	--

