

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.33 of 2020

Arising Out of PS. Case No.- Year-0 Thana- District- Muzaffarpur

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ABHIJEET KUMAR Son of Shree Jeera Prasad Sah Resident of Village -
Lalu Chapra, P.S.- Paroo, Distt - Muzaffarpur.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Rubi Kumari Wife of Abhijeet Kumar Resident of Village - Lalu Chapra,
P.S.- Paroo, Distt - Muzaffarpur. At present D/o Govind Prasad Gupta,
Resident of Ratavara Hathu, P.S.- Paroo, Distt - Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prithvi Nath Mishra
For the Respondent/s : Mr.Nirmala Kumari

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 09-02-2024 An order of maintenance passed in Maintenance

Case No. 80 of 2016 by the learned Principal Judge, Family
Court, Muzaffarpur on 14th October, 2019 is assailed in the
instant Revision on the ground that the petitioner/husband does
not have the financial capacity to pay maintenance allowance at
the rate of Rs. 5,000/- per month as directed by the learned
Judge in the impugned order.

2. In support of such contention, it is submitted by
the learned Advocate for the petitioner that the petitioner is the
owner of only 5 katthas of land. The said land is under the
possession of his parents and he works as an agricultural
labourers and Rs. 40,000/- per annum and he has income of Rs.



20,000/- per annum from other sources, thus, the petitioner earns Rs. 60,000/- per annum. When the above made income of the petitioner is Rs. 5,000/- per month, how is it possible to pay the entire sum to maintain his wife.

3. It is also submitted by the learned Advocate for the petitioner that the petitioner has already filed a Suit for divorce in the year 2014. The maintenance case was filed by the petitioner as a matter of retaliation, it is not possible for him to pay the amount of maintenance as directed by the learned trial Judge.

4. Even if, entire submission made by the learned Advocate for the opposite parties be accepted. It is to be held that Section 125 casts a duty upon the husband to maintain his wife.

5. It is true that the parties did not file any document in support of their income in the trial court. However, in Kamal vs. State of U.P., decided by a coordinate Bench of Allahabad High Court in Criminal Revision No. 461 of 2023 on 25th January, 2024 that when the husband claims to be a day labourer, his monthly income is to be considered on the basis of the Minimum Wages Act. Taking into account, the principle laid down in the above mentioned decision which was passed



relying on a Supreme Court decision in Anju Garg. vs. Deepak Kumar Garg reported in 2022 AIR Online SC 306, this court can safely hold that the income of the opposite party is presumed to be Rs. 12,000/- per month. The wife/opposite parties entitle to pay one third of the said amount. Therefore, the opposite party is entitled to pay Rs. 4,000/- per month as a maintenance allowance.

6. For the reasons stated above, the order of maintenance passed in Maintenance Case No. 80 of 2016 on 14th October, 2019 by the learned Principal Judge, Family Court, Muzaffarpur, is modified.

7. The petitioner is directed to pay maintenance at the rate of Rs. 4,000/- per month to the opposite party/wife within 15th of each succeeding month. The petitioner is also directed to pay arrear maintenance as the same date as per the direction made by the trial court.

8. Accordingly, the instant Revision is disposed of.

(Bibek Chaudhuri, J)

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