

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.40 of 2020

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

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Neha Kumari, Wife of Sri Ajit Kumar and Daughter of Sri Raj Dev Pandit
Resident of Village-Karnibigha Aungari, District-Nalanda and at present
residing at Mohalla-Near T.N.Singh House, New Hernichak Bye Pass, Post
office-Anisabad, Police Station-Beur, District-Patna-800002.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ajit Kumar, Son of Sri Brij Nandan Pandit, Resident of Village-Karnibigha
Aungari, District-Nalanda and at present posted as Station Controller under
Delhi Metro Rail Corporation, New Delhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Chiranjiva Ranjan
For the O.P. No. 2	:	Mr. S. N. P. Singh, Sr. Advocate
		Mr. S. P. Singh, Advocate
		Mr. Gaurav Kumar, Advocate
For the State	:	Ms. Asha Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

- 8 24-04-2024 1. The instant Criminal Revision is directed against an

order, dated 27th September, 2019, passed in Maintenance Case

No. 171 (M) of 2013, by the learned Principal Judge, Family

Court at Patna, whereby and whereunder, the learned Trial

Judge passed an order of maintenance in favour of the Opposite

Party at the rate of Rs. 10,000/- per month from the date of

delivery of judgment.
2. The petitioner/wife of the above-mentioned

Maintenance Case is the revisionist in the instant Criminal

Revision.



3. It is contented on behalf of the petitioner that the learned Trial Judge ought to have granted maintenance allowance from the date of the application under Section 125 of the Cr.P.C. filed on 12th of August, 2013. The petitioner has filed the instant Revision also for enhancement of the maintenance amount under the present facts and circumstances of the earnings/income of Opposite Party No. 2.

3. It is contented on behalf of the petitioner that, indisputably, she is a legally married wife of the Opposite Party No. 2. Marriage of the Opposite Party No. 2 was solemnized on 28th of June, 2012, according to the Hindu Rights and Ceremonies. After marriage, she went to her matrimonial home to live conjugal life with the Opposite Party No. 2. However, the Opposite Party No. 2 and his family members started torturing her, both physically and mentally. The petitioner lodged a complaint against the Opposite Party No. 2 and other matrimonial relations in the jurisdictional Police Station of her matrimonial home and on the basis of his complaint, Aungari (Pirbigha) P.S. Case No. 30 of 2013 was registered on 1st of August, 2013, under Sections 341/323/354/344/498A of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act. Thereafter, the petitioner was compelled to a stay at her



paternal home at Patna.

4. It is further contended on behalf of the petitioner that the Opposite Party No. 2 works as a Station Controller under the Delhi Metro Rail Corporation and he has been earning Rs. 40,000/- per month from his salary. Apart from his salary, the Opposite Party No. 2 has substantial income by way of agriculture and he earns Rs. One lakh per month from cultivation. The petitioner, on the contrary, is a house-wife and she has been residing at Patna. She has also no means to maintain herself and, therefore, she prayed for maintenance at the rate of Rs. 10,000/- per month from the date of filing of the application.

5. By filing a written objection, the Opposite Party No. 2 pleaded that after marriage, the petitioner never wanted to lead a peaceful and happy conjugal life with her husband. She made false allegation of torture against the Opposite Party No. 2 and her other matrimonial relations. It is also stated that she is a lady of immoral character. She is having physical relationship with several antisocial elements and, therefore, she is not entitled to receive any maintenance allowance. The Opposite Party No. 2 also stated that she has been paying Rs. 5000/- per month as per the direction passed in Criminal Miscellaneous



Case No. 44157 of 2013. The Opposite Party No. 2 further claims that he is an employee of Metro Rail and receives Rs. 15670/- as his salary and he is not earning more than Rs. 30,000/- per month.

6. The parties adduced evidence in the Trial Court in support of their case and written objection and the Trial Court passed the impugned order, directing the Opposite Party No. 2 to pay the maintenance allowance at the rate of Rs. 10,000/- per month from the date of the order. While passing the order, the learned Trial Judge considered the fact that the petitioner has been receiving maintenance allowance of Rs. 5000/- per month as per the order passed by this Court in Criminal Miscellaneous Case No. 44157 of 2013.

7. The learned Advocates on behalf of the petitioner and the Opposite Party No. 2 made their submissions as per the case of the respective parties made out in the application and the written objection thereof. By filing a counter affidavit, the Opposite Party No. 2 stated that he has already filed a suit for divorce which was registered as Divorce Case No. 294 of 2015 before the learned Principal Judge, Family Court, Nalanda at Bihar Sharif. The Opposite Party No. 2 also stated that the petitioner willfully absolved him and married for the second



time to another person in Uttar Pradesh. She previously filed a suit for restitution of conjugal rights which was registered as Matrimonial Case No. 5625 of 2014 but the said suit was dismissed for default on 30th of August 2023.

8. The Opposite Party No. 2 also denied the submission of the petitioner that he earns Rs. 40,000-45,000/- per month from his salary.

9. The Learned Advocate on behalf of the petitioner submits that the Hon'ble Supreme Court in the case of ***Rajnish v. Neha***, reported in ***(2021) 2 SCC 324***, clearly held that maintenance in all cases will be awarded from the date of filing of the application for maintenance. The object of enacting maintenance legislations, so as to enable wife to overcome financial crunch which occurs on separation from husband. Financial constraints of a dependant spouse hampers their capacity to be effectively represented before the Court. In order to prevent a dependant from being reduced to destitution, it is necessary that maintenance is awarded from the date on which the application for maintenance is filed before the concerned Court. He also refers to another judgment of the Hon'ble High Court of Judicature at Allahabad in the case of ***Raj Kumari v. State of Uttar Pradesh & Or.***, reported in ***2021 (1) AILLJ 381***,



wherein a decision of the Hon'ble Supreme Court was reiterated and the High Court in revision enhance the amount of maintenance in ***Shail Kumari Devi & Anr. v. Krishan Bhagwan Pathak @ Kishun B. Pathak***, reported in ***(2008) 9 SCC 632***. The Hon'ble Supreme Court held that it is upon the Magistrate to award maintenance from the date of application and there is nothing which requires to record special reasons.

10. The Learned Advocate for the petitioner next submits that the petitioner failed to collect the salary slip of her husband. However, from the website of Delhi Metro Rail Corporation Limited, it is found that the salary of Assistant Engineer is of the pay scale of Rs. 46000-145000/-. As the Opposite Party No. 2 has been working in Metro Railways since before his marriage, therefore, he is in service for more than 10 years. Thus, the Court can take judicial notice of the fact that the Opposite Party No. 2 earns at least Rs. 60,000/- per month from his salary. The Court, sitting in revision, can enhance the maintenance amount.

11. On the other hand, the learned Advocate appearing on behalf of the Opposite Party No. 2 submits that the Opposite Party No. 2 was a student of a college at the time of his marriage. He further submits that after marriage, the petitioner



did not want to stay with her husband. She used to live an extravagant life with her friends and associates. The Opposite Party No 2 witnessed such free mixing of the petitioner going to her college and university. It is not the fact that the Opposite Party no 2 and his relatives tortured her either physically or mentally. On the other hand, she voluntarily left her matrimonial home without any reason.

12. Having heard the learned counsels for the parties and on perusal of the materials on record, this Court finds that the Opposite Party No 2 has failed to prove his allegations that the petitioner has married to another person and has been residing in Uttar Pradesh. The issue relates to question of fact and there is no scope in the instant Revision to decide the said question of fact.

13. Since the Opposite Party No. 2 failed to prove that the petitioner has married for the second time, the Trial Court rightly held that marital relationships exists between the petitioner and Opposite Party No 2 and directed to pay maintenance to the petitioner at the rate of Rs 10,000/- per month from the date of the order.

14. However, in view of the decision of the Hon'ble Supreme Court in the case of ***Rajnesh v. Neha*** (Supra), the Trial



Court was under an obligation to pay maintenance from the date of filing of the application.

15. Therefore, the instant Revision is disposed of, directing the Opposite Party, No 2 to pay maintenance allowance at the rate of Rs. 10,000/- per month from the date of filing of the application. Since the Opposite Party, No 2 has been paying Rs. 5000/- per month to the petitioner, he is entitled to get adjustment of the said amount from the earlier maintenance.

16. The petitioner is at liberty to file appropriate application under Section 128 of the Code of Criminal Procedure, claiming arrears and current maintenance at the rate of Rs 10,000/- per month.

16. With the aforesaid observation / direction, this petition stands disposed of.

(Bibek Chaudhuri, J)

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