

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.123 of 2019

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

Md. Mustaqueem Khan @ Mustaquim Khan Late Sultan Khan Resident of Village- Nanaura P.S.- Nawadah, District- Nawadah at present resident of Mohalla- Raza Nagar Charkama Road P.O. and P.S.- Rafiganj, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Fahmida Khatoon Md. Mustaqueem Khan Resident of Village- Sanaiya, P.S.- Ariyari, District- Shiekhpora
3. Rashida Khatton Md. Mustaqueem Khan Permanent resident of Village- Nanaura, P.S.- Nawadah, District- Nawadah at present resident of Mohalla- Raza Nagar Charkama Road, P.O. and P.S.- Rafiganj, District- Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Md. Anis Akhtar, Advocate
For the State	:	Mr. Sunny Kumar, A.P.P.
For the O.P. No.2	:	Dr. Anjani Prasad Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

10 21-02-2024 Heard learned advocate for the petitioner and learned Additional Public Prosecutor for the State as well as learned advocate for the opposite party no.2.

2. On perusal of the impugned order as well as the documents filed by both the parties in the instant revision, this Court finds some undisputed factual circumstances. They are :-

(i) marriage of the petitioner was held with the opposite party no.2 in the year 1973 according to Mohammedan Rites and customs.

(ii) in the said wedlock the opposite party no.2 gave



birth to two sons and a daughter.

(iii) the opposite party no.2 has been residing separately from her husband since 1982.

(iv) the petitioner has claimed that he divorced the opposite party no.2 pronouncing Talak in the year 1982.

(v) the opposite party no.2 married another lady, namely, Rashida in the year 1982 itself. In the said wedlock Rashida gave birth to five sons and two daughters.

(vi) in disputably, the petitioner was working in police department and he is now superannuated.

3. The instant revision is directed against an order dated 04.12.2018 passed by the learned Principal Judge, Family Court, Sheikhpura in Maintenance Case No. 37M of 2017 being a proceeding registered upon an application under Section 125 of the Cr.P.C. directing the petitioner to pay maintenance at the rate of Rs.10,000/- per month to the opposite party no.2.

4. It is also on record that after disposal of the said maintenance case, on 04.12.2018 the learned Judge passed another order on 28.02.2022 in the said disposed of record directing the petitioner to go on paying Rs.2,000/- per month in order to repay the arrear maintenance accumulated in favour of the opposite party no.2.



5. The petitioner has challenged the above mentioned orders on the ground of his financial stringency because of the fact that the petitioner requires to maintain his second wife, five sons and two daughters and after making arrangement for their maintenance it is not possible for him to pay monthly allowance of Rs.12,000/- (Rs.10,000/- as current maintenance and Rs.2,000/- as arrears maintenance).

6. It is also contended by the petitioner that the son of opposite party no.2 has been working and he is maintaining his mother. The opposite party no.2 has filed a counter affidavit alleging inter-alia that the petitioner gets Rs.45,000/- per month from his pension, he has two houses and he has landed property, he gets considerable amount from his tenants. Beside the said income, petitioner got Rs.60,00,000/- (Rupees sixty lacs only) towards his pensionary benefit at the time of his retirement. Therefore, the petitioner has sufficient money to pay maintenance allowance at the rate of Rs.12,000/- per month.

7. On perusal of the impugned order it is found that the petitioner inspite of getting opportunity did not adduced any evidence, the Trial Court passed the impugned order on the basis of the evidence adduced by the witnesses on behalf of the opposite party no.2, who was the petitioner before Trial Court.



Upon consideration of the evidence on record, the learned Judge fixed a sum of Rs.10,000/- towards maintenance.

8. It is contended by the learned advocate for the petitioner that the petitioner was punished in a departmental proceeding by the jurisdictional Superintendent of Police. The said order was challenged by the petitioner in Civil Writ Jurisdiction Case No.10537 of 2006. The said writ petition was disposed of on 27.01.2015 with the following observations :-

“7. In order to do complete justice between the parties, this Court is inclined to follow the third option. Accordingly, the impugned order dated 26.03.1985 (Annexure-1) is hereby set aside and quashed with effect from 01.01.2015 from which date the petitioner is no longer in service and from which date the respondent no. 5 to 7 shall not be granted any amount from retiral dues and pension etc. either already paid or payable to the petitioner. The petitioner shall be entitled to receive entire retiral dues and pension etc. However, the respondent no. 5 shall be at liberty to file a fresh petition under the appropriate law for grant of maintenance to her. If such a petition is filed before the competent authority/Court, the same shall be considered and decided in accordance with law without being prejudiced by any observations made in the present order.”

9. Maintenance Case No.37M/2017 was filed by the opposite party no.2 pursuant to the above direction. It is



submitted by the learned advocate for the petitioner that he has been going on paying Rs.12,000/- per month regularly to the opposite party no.2. It is also contended by the learned advocate for the petitioner that in the impugned order the Trial Court did not make any discussion about the case of the petitioner. The petitioner could not attend the Trial Court to give evidence because of threat perception, so he has failed to adduce any evidence.

10. Learned advocate for the opposite party no.2 on the other hand submits that at present the petitioner gets pension at the rate of Rs.45,000/- per month, the pensionary benefit which the petitioner received has already been taken note of by this Court. It is also submitted by the learned advocate for the opposite party no.2 that all sons of the petitioner born in the wedlock between him and his second wife are established and they are earning their own livelihood. Both the daughters are married.

11. Considering all such circumstances, there is no reasons to interfere with the impugned order.

12. Having heard the learned advocates for the parties, this Court is of the view that the only point of dispute is as to whether the petitioner has sufficient means to pay Rs.12,000/-



per month or not.

13. It is found from the record that during Trial of the case neither of the parties filed any affidavits of assets and liabilities. As per the guidelines of the Hon'ble Supreme Court enunciated in the case of *Rajnesh Vs. Neha* reported in (2021) 2 SCC 324. Therefore, this Court disposes of the instant revision directed both the parties to file their affidavits of assets and liabilities as per the proforma and guideline made by the Hon'ble Supreme Court before the Trial Court within three weeks from the date of communication of this order.

14. The Trial Court shall considered the affidavits of assets of both the parties and thereafter, fixed the maintenance amount to be paid by the petitioner to the opposite party no.2 along with arrears maintenance.

15. In the meantime, as per admission of the learned advocate for the petitioner, the petitioner shall go on paying/ depositing a sum of Rs.12,000/- per month without prejudice to his rights and contentions as may appear in the affidavits of assets and liabilities in the Trial Court.

16. The Trial Court is directed to dispose of the revision only on the point of quantum of maintenance within two months from the date of receipt of the affidavit of assets and



liabilities.

17. In view of the above discussion, the impugned order dated 04.12.2018 is set aside, accordingly, the instant revisions is allowed.

(Bibek Chaudhuri, J)

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