

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.154 of 2019

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

Rajesh Kumar Late Raghubir Mahto @ Raghubir Mathai Vill-Galgaliya Chak (Ghatogor) P.S-Galgaliya, Thakurganj, Distt.-Kishanganj, at present working as J.I.O. IInd (SIB) at Kibithu in Arunachal Pradesh, Head Office Dibrugarh, Assam.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Deep Sikha Choudhary Rajesh Kumar Daughter of Shashidhar Choudhary, Vill-West Ajimganj Haveli kharagpur, P.S-Haveli Kharagpur Distt.-Munger.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Awadhesh Kumar Singh, Advocate
For the Respondent/s : Mr. Anand Kishore Choudhary, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

9 05-03-2024 The instant revision is directed against an order dated 29.11.2018 passed by the learned Principal Judge, Family Court, Munger in Maintenance Case No. 73 of 2016 directing the petitioner to pay maintenance at the rate of Rs.15,000/- per month to the opposite party no.2 and Rs.5,000/- per month to her son, total being Rs.20,000/- per month from the month of the filing of the maintenance application.

2. While challenging the said order passed by the learned Principal Judge, Family Court, Munger it is submitted by the learned advocate for the petitioner that the petitioner got his service on compassionate ground on the death of his father. Since the employment of the petitioner is on compassionate



ground it is his duty to maintain all the family members who were dependent upon his deceased father. The learned Trial Judge did not consider the said aspect and straightway directed the petitioner to pay Rs.20,000/- per month to the opposite party no.2.

3. It is further submitted by the learned advocate for the petitioner that in disputably marriage of the petitioner was solemnized on 06.07.2011 as per Hindu Rites and customs. For few days, the opposite party no.2 stayed with the petitioner. During their happy conjugal life they were blessed one male child. The child has been residing with his mother. It is also submitted on behalf of the petitioner that all along the petitioner wants to stay with the opposite party no.2 by leading a happy conjugal life but the opposite party no.2 on her own willingly without any sufficient ground left the association of the petitioner, therefore, she is not entitled to get any maintenance. Moreover, the opposite party no.2 is a teacher in a Govt. School and she earns Rs.40,000/- per month as a teacher. Therefore, the opposite party no.2 has sufficient means to maintain herself and her son and she is not entitled to get any maintenance from her husband.

4. The learned advocate for the opposite party no.2 on



the other hand submits that the opposite party no.2, before her marriage was a contractual teacher in a primary school. After marriage on the pressure of the petitioner she had to leave her job. Subsequently, by an order of this Court she was again engaged as a contractual teacher of a Primary School at Munger and earns Rs.22,000/- per month. The petitioner indisputably earns more than Rs.76,000/-, he is a Central Government Employee. As wife of the petitioner, the opposite party no.2 has the right to live with dignity and status at par with the petitioner.

5. According to the learned advocate for the petitioner a sum of Rs.22,000/- is not enough to maintain herself and her minor son, therefore, the opposite party no.2 is entitled to get maintenance.

6. It is also submitted by the learned advocate for the opposite party no.2 while admitting that the employment of the petitioner was on compassionate ground but all his brothers have attained majority they have their own source of income and all of them are married. The mother of the petitioner is getting family pension, therefore, none of the family members of the petitioner is at present dependent upon the petitioner.

7. It is also submitted by the learned advocate for the petitioner that during the pendency of the maintenance



proceeding and again before this Court the petitioner gave proposal that opposite party no.2 should stay together with the petitioner and the petitioner will keep her with all dignity and honor but the opposite party no.2 wants to keep the opposite party at her native matrimonial home situated in a village of Bihar, while the petitioner has been working in Delhi. The petitioner never proposed to take her to Delhi. If the opposite party no.2 is compelled to stay at her native matrimonial home this will hamper the academic career and future of her son. Therefore, she is not agreeable to such proposal.

8. Though the learned advocate for the petitioner vehemently, urged that the petitioner wants to keep the opposite party with him with proper dignity and honor, at the same time it is ascertain from the record that the petitioner has also filed a suit for divorce for dissolution of marriage. When a suit for divorce is pending how it is possible for the wife/opposite party no.2 to stay with her husband/petitioner who has filed a suit for divorce against her.

9. Having heard the learned advocate for the petitioner and the opposite party no.2 and on careful perusal of the impugned judgment as well as the record of the case, this Court finds that marriage of the parties is not disputed, birth of a



child in the said wedlock is also admitted. It is also not in dispute that the wife of the petitioner has been residing at Munger alone and the petitioner is residing at his place of work.

10. This Court also finds the admitted position regarding the income of the parties. The opposite party no.2 earns Rs.22,000/- per month. On the other hand the petitioner earns more than Rs.76,000/- per month. The opposite party no.2 maintains her son, imparts proper education to her son and also maintains herself.

11. It is no longer *res-integra* that the amount of maintenance shall had to be fixed according to the status of the parties. It is also decided that a wife for her maintenance is entitled to get 1/3rd of the salary of the husband. At the same time, this Court is unmindful to note that the opposite party earns Rs.22,000/- per month shall has also equal obligation to maintain their son.

12. Considering all such aspect of the matter, this Court is inclined to modify the amount of maintenance to be paid by the petitioner to the opposite party no.2.

13. The petitioner is directed to pay maintenance at the rate of Rs.8,000/- per month in favour of the opposite party no.2 being his wife. The petitioner is also directed to pay further



Rs.8,000/- per month for the maintenance of their son. Thus, the petitioner is directed to pay Rs.16,000/- per month to the opposite party no.2 for the maintenance of the opposite party no.2 and her son. All other conditions stipulated in the impugned order shall remain enforce.

14. With the above order, the instant revision is disposed of on contest.

(Bibek Chaudhuri, J)

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