

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.139 of 2020

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

MD. ASLAM S/o Md. Jamal R/o Mohalla- Sarai Kilaghat, Rayen Tola, P.S.-
Tatanpur, District- Bhagalpur

... .. Petitioner/s

Versus

1. Bibi Sakina Khatoon @ Bibi Sakina W/o Md. Aslam @ D/o Md. Sharif R/o village- Rajbari Shajangi, P.S.- Habibpur, District- Bhagalpur
2. Md. Sahil Raza S/o Md. Aslam R/o village- Rajbari Shajangi, P.S.- Habibpur, District- Bhagalpur

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Mahtab Alam, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 26-02-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner is the husband of the opposite party no.1. The opposite party no.1 filed an application under Section 125 of the Cr.P.C. before the learned Principal Judge, Family Court, Bhagalpur in Misc. (Maintenance Case) No. 108 of 2009 which was disposed of on 24.12.2019 directing the petitioner to pay Rs.2,000/- per month to the opposite party no.1 from the date of the passing of the order. The said order is under challenge in the instant revision on the following grounds :-

(i) In a previous proceeding under Section 125 of the Cr.P.C. the parties were directed to resolved their matrimonial dispute amicably out of the Court



and as they failed to resolved their dispute, the application under Section 125 of the Cr.P.C. was surprisingly, dismissed. Subsequently, in Misc. (Maintenance Case) No. 108 of 2009, the petitioner was directed to pay maintenance at the rate of Rs.2,000/- per month.

(ii) The Trial Court failed to consider that the opposite party no.1 did not want to live with the petitioner without any sufficient ground.

(iii) The opposite party no.1 has sufficient means to maintain herself practically she runs a Nursery school in the village of her paternal home. She has her independent income. On the contrary the petitioner earns Rs.200/- per day by embroidery work. Thus, he earns Rs.6,000/- approximately in a month and it is not possible for him to pay maintenance at the rate of Rs.2,000/- per month.

3. Previously, the instant revision was taken up for hearing by a Co-ordinate Bench. The co-ordinate Bench by an order dated 21.09.2022 directed the Superintendent of Police, Bhagalpur to make an inquiry as to whether the opposite party no.1 runs a school under the name and style of Kids Grow Academy School.

4. Today the Superintendent of Police, Bhagalpur personally appeared before this Court and submitted a report stating inter-alia that the opposite party no.1, namely, Sakina Khatoon used to run a Kinder Garden School under the name



and style of Kids Grow Academy along with her sister. The said school was established in the year 2019 but after the outbreak of COVID in the year 2020, the school was closed and thereafter, the said school is not running.

5. Thus, it is established during trial of the case that the petitioner is the legally wedded husband of the opposite party no.1. Secondly, the opposite party no.1 has been residing at present at her paternal home with her son. The minor daughter of the parties has been residing with the petitioner. It is also established from the record as well as the reports submitted by the Superintendent of Police, Bhagalpur that the opposite party no.1 at present has no source of income.

6. It is submitted by the learned advocate for the petitioner that the petitioner is not in a position to pay Rs.2,000/- per month towards maintenance allowance as he is approximate earning is Rs.6,000/- per month and he maintains his minor daughter.

7. Needless to say that in respect of the maintenance case, neither of the parties could produce any document with regard to the income of their adversary. It is contended on behalf of the petitioner that he earns Rs.200/- per day by Embroidery work.



8. It is not in dispute that the petitioner has been working on all days of a month and a year. When there is no document produced by either of the parties regarding income, it is decided by the Hon'ble Supreme Court in the case of *Anju Garg & Anr. Vs. Deepak Kumar Garg* reported in *SCC Online (2022) SC 1314* that the income of the husband shall be determined on the basis of Minimum Wages Act. The same view was taken by the Allahabad High Court in an unreported decision dated 25.01.2024 in *Kamal Vs. State of U.P. (Cr. Revision No. 461 of 2023)*.

9. Considering such circumstance, the monthly income of the petitioner shall be held to be Rs.12,000/- per month.

10. The opposite party no.1 is entitled to get 1/3rd of the monthly income of the petitioner towards her maintenance. Therefore, the opposite party no.1 is entitled to get maintenance at the rate of Rs.4,000/- per month.

11. The quantum of maintenance granted by the Trial Court in Misc. (Maintenance Case) No. 108 of 2009 is accordingly, modified.

12. The petitioner is directed to pay Rs.4,000/- per month within 10th of each succeeding month to the opposite



party no.1 from the date of this order.

13. Let a copy of this order be sent to the Trial Court
for information and necessary action, if any.

14. The instant revision is accordingly, disposed of.

(Bibek Chaudhuri, J)

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