

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.325 of 2019

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

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INDU DEVI W/o- Jitendra Yadav, D/o- Radha Chaudhary Resident of
Village- Pratap pur, P.S.- Nautan, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Jitendra Yadav S/o- Surendra Chaudhary R/o Village- Koreya, P.O. and P.S.-
Bhorey, District- Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Pandey, Advocate
For the Respondent/s : Mr. Satyendra Narayan Singh, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

7 25-01-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The instant revision is directed against an order of
dismissal of an application under Section 125 of the Cr.P.C.
passed in Misc. Case No.281 of 2013 on 09.10.2018 by the
learned Principal Judge, Family Court, Siwan.

3. The application under Section 125 of the Cr.P.C.
was dismissed mainly on the two grounds :-

(a) The petitioner failed to produce two witnesses on
the date of cross examination, therefore, the said witnesses were
not cross examined on behalf of the opposite party and the
evidence was closed.



(b) The petitioner failed to produce any document relating to source of income of the opposite party.

4. It is not in dispute that the petitioner is the legally married wife of the opposite party. It is also not disputed that she has been residing at her paternal home with one son and two daughters and she has no source of income. Therefore, without considering such fact, the learned Principal Judge ought not to have dismissed the petition under Section 125 of the Cr.P.C. straightway. It is stated by the learned Trial Judge that the petitioner failed to prove the source of income of the opposite party. It is the case of the petitioner that the opposite party is doing some private job in Delhi and he has also income from agriculture. It was not possible for the petitioner to produce the salary slip of the opposite party under such circumstance, the learned Trial Judge could have applied the principles laid down by the Hon'ble Supreme Court in the case of Rajnesh Vs. Neha reported in (2021) 2 SCC 324 and directed the parties to file affidavits of assets and liabilities to ascertain the income and liability of the parties and on the basis of affidavits of assets, the learned Trial Judge would have decided the amount of maintenance which the petitioner and her minor children were entitled to get.



5. In view of the above discussion, the impugned order is set aside and the instant revision is allowed.

6. The learned Trial Judge is directed to allow the opposite party to cross examine the witnesses on behalf of the petitioner and also direct both the parties to file affidavits of assets and liabilities to ascertain the income of the parties and thereafter, proceed with passing final order in respect of the petition under Section 125 of the Cr.P.C.

(Bibek Chaudhuri, J)

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