

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.372 of 2019

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

=====

Akhilesh Mishra @ Akhilesh Kumar, Son of Late Awadhesh Mishra, Resident of Village - Patour, P.S.- Ashok Paper Mill, Distt - Darbhanga.

... .. Petitioner/s

Versus

Pinki Mishra, Wife of Sri Akhilesh Mishra, Resident of Village - Pataur, P.S. - Ashok Paper Mill, Distt - Darbhanga, At present Resident of Mohalla - Madanpur, P.S.- Laheria Sarai, Distt - Darbhanga.

... .. Respondent/s

=====

Appearance :

For the Petitioner : Mr. Suraj Narain Yadav, Advocate.
For the State : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

7 25-11-2024 Mr. Suraj Narain Yadav, learned counsel for the petitioner is present.

2. The present petition is at the stage of admission. But without admission, notice was issued to the Opposite Party No. 2. The notice has been received back unserved with endorsement that the Opposite Party No. 2 is not living at the given address.

3. I heard learned counsel for the petitioner at length on the point of admission.

4. The present revision petition has been filed against the impugned order dated 30.11.2018 passed by learned Principal Judge, Family Court, Darbhanga, in Maintenance Case No. 64 of 2012 whereby the petitioner/husband has been



directed to pay Rs.8,000/- per month to Opposite Party/wife towards her maintenance and that of one minor daughter living with her.

5. Learned counsel for the petitioner submits that the impugned order is not sustainable in the eye of law because there is error of law as well as perversity of finding of fact. To substantiate his submission, he submits that there is no finding by learned court below regarding monthly income of the petitioner and the direction to pay Rs.8,000/- per month towards maintenance to the Opposite Party/wife and her minor daughter is arbitrary. He further submits that the petitioner is all along willing to keep his wife/Opposite Party and the daughter with himself in his house. However, the Opposite Party/wife is not ready to live with him and she is willfully living at her *Maikey* along with the minor daughter. Hence, the Opposite Party/wife is not entitled to get any maintenance.

6. I considered the submission advanced by learned counsel for the petitioner and perused the material on record and the impugned order.

7. I find that marriage between the petitioner and the Opposite Party is not disputed. Birth of minor daughter out of the wedlock is also admitted. However, only dispute is that as



per the petitioner, the Opposite Party/wife has withdrawn from the society of the petitioner without any rhyme and reason and, hence, she is not entitled to get any maintenance. Income of the petitioner is also disputed. As per claim of the Opposite Party/wife, the petitioner has monthly income of Rs.50,000/- from agricultural land and business whereas as per the petitioner himself, he has no such income.

8. From perusal of the impugned order, it transpires that there is one criminal case under Section 498-A of the Indian Penal Code lodged against the petitioner/husband and the same is still pending consideration, whereas it is not a case of the petitioner/husband that he has filed a matrimonial petition under Section 9 of the Hindu Marriage Act for restitution of his conjugal rights. In such background of facts, it cannot be held that Opposite Party/wife is living at her *Maikey* without any rhyme or reason. It could have been a different situation if there might have a decree of restitution of conjugal rights under Section 9 of the Hindu Marriage Act in favour of the petitioner and she could not have joined the matrimonial home of the petitioner. But this is not so. In such situation, it cannot be held that wife has withdrawn from the society of the petitioner without any rhyme and reason.



9. As far as income of the petitioner/husband is concerned, it transpires from the impugned order that three witnesses have been examined on behalf of the Opposite Party/wife in support of monthly income of Rs.50,000/- and such finding of the Court awarding maintenance @ Rs.8,000/- per month to wife and her minor daughter is not arbitrary and excessive. Hence, I find that there is no error of law or any perversity of finding warranting any interference in it.

10. Hence, the present petition is liable to be dismissed at the threshold without issuing notice to the Opposite Party. Accordingly, the present petition is dismissed *in limine*.

11. It may be mentioned that if the petitioner/husband is willing to keep his wife at his matrimonial home, he has liberty to file a Matrimonial Case under Section 9 of the Hindu Marriage Act, before the Family Court.

(Jitendra Kumar, J)

S.Ali/-

U		T	
---	--	---	--

