

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.403 of 2019

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

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PRAVIN KUMAR SINGH @ PRAVIN KUMAR, Son of Late Surendra Prasad Singh Resident of Mohalla-Bhatta Bazar, P.S.-K.Hat, District-Purnia.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Neha Singh @ Priyanka, Ex-wife of Pravin Kumar Singh, Residing with her widow mother in the house of Sri Sanjay Sharma of Mohalla-Navratan Hata, P.S.-K.Hat, District-Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Pankaj Kumar Sinha, Adv., Mr. Diwakar Sinha
For the O.P. No.-2	:	Mr. Bimal Kumar, Adv., Mr. Dhananjay Kumar, Adv.
For the State	:	Mr. Jagdhar Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

5 11-01-2024 The instant Revision is directed against an order dated 23rd February, 2019, passed in Maintenance Case No. 54 of 2017, by the learned Principal Judge, Family Court, Purnea, rejecting an application for alteration of maintenance allowance under Section 127 of the Cr.P.C. in view of the changed circumstanced filed by the present petitioner/husband.

2. Only ground for which the petitioner/husband prayed for cancellation of maintenance allowance, granted by the trial court was that the opposite party no. 2/wife obtained



a decree for divorce on the ground of desertion. According to the learned Advocate the learned trial Judge failed to consider that when a decree for divorce is passed on the ground of desertion, the Court while deciding an application under Section 125 of the Cr.P.C. or Section 127 of the Cr.P.C. ought to have held that the wife willfully and deliberately, without any sufficient reason, refused to live with her husband. Therefore, when a decree for divorce has been passed on the ground of desertion, the opposite party no. 2, being a divorced wife, is not entitled to get any maintenance allowance in accordance with the provision under Section 125 of the Cr.P.C.

3. I have heard the learned Advocates for the petitioner and the private opposite party/wife.

4. Explanation (b) to Section 125(1) defines wife “which includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried”. It is not the case of the petitioner that the opposite party no.2 has remarried.

5. Similar ground was taken before the trial court. The learned trial Judge placed reliance on **Rohtash Singh Vs. Ramendri (Smt.) and Others** reported in **2000 (3) SCC 180**.



In the said report, it is clearly observed that where the husband had obtained divorce on the ground of desertion by the wife, but she was held entitled to maintenance allowance as a divorce wife under Section 125 of the Cr.P.C. and the fact that she has deserted her husband and on that basis a decree for divorce was passed against her cannot be treated as a bar to her claim for maintenance as a divorced wife.

6. Similar question came up before the Calcutta High Court in **Sukumar Dhibar Vrs. Anjali Dasi**, reported in **1983 (Cr.L.J.) 36 (Cal.)**. The High court at Calcutta held the similar view to the effect that a decree for divorce was not to be treated as a bar to her claim for maintenance as a divorced wife.

7. Similar view was taken by the Allahabad High Court in the case under consideration before the Hon'ble Supreme Court. The Hon'ble Supreme Court relied upon the Judgment of the Calcutta High Court and first, the order in **Rohtash Singh (supra)**. Subsequently also Rohtas Singh was relied upon in a subsequent decision by the Hon'ble Supreme Court, passed in **S.L.P. (Crl.) No. 10137 of 2015 on 6th April, 2017**.

8. In view of the above direction, I do not find any



ground to spill ink over the Judgment passed by the trial Judge. The impugned order is affirmed and the instant Revision is dismissed.

(Bibek Chaudhuri, J)

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