

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.338 of 2021

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

Md. Imtiyaz @ Imtiyaz S/O Late Abdul Jalil R/O Village-Pathrabari, P.S.-
Jokihat, District-Araria.

... .. Petitioner/s

Versus

1. Bibi Rahat Parween W/O Md. Imtiyaz Residing At Village-Pathrabari, P.S.-
Jokihat, District-Araria. At Present D/O Md. Mojaffar, R/O Village-Sisona
Tola-Ajhawa, Ward No.13, P.S-Jokihat, District-Araria.
2. Bibi Amrana D/O Md. Imtiyaz Residing At Village-Pathrabari, P.S.-Jokihat,
District-Araria. At Present D/O Md. Mojaffar, R/O Village-Sisona Tola-
Ajhawa, Ward No.13, P.S-Jokihat, District-Araria.
3. Bibi Nazrana D/O Md. Imtiyaz Residing At Village-Pathrabari, P.S.-Jokihat,
District-Araria. At Present D/O Md. Mojaffar, R/O Village-Sisona Tola-
Ajhawa, Ward No.13, P.S-Jokihat, District-Araria.
4. Md. Intakhab S/O Md. Imtiyaz Residing At Village-Pathrabari, P.S.-Jokihat,
District-Araria. At Present D/O Md. Mojaffar, R/O Village-Sisona Tola-
Ajhawa, Ward No.13, P.S-Jokihat, District-Araria.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ramesh Kumar Singh, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 14-03-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The instant revision is directed against the
judgment and order passed in Maintenance Case No. 295 of
2018 by the learned Principal Judge, Family Court, Araria on
05.03.2020. By passing the impugned order the Trial Court
granted maintenance at the rate of Rs.3,000/- per month for the
complainant and Rs.1,000/- each for her two minor children,



total being Rs.5,000/-.

3. It is contended on behalf of the petitioner/husband that the opposite party no.1 is a legally married wife of the petitioner. In the said wedlock the opposite party no.1 gave birth to five children. Three children are residing with the petitioner and opposite party no.1 left her matrimonial home without any cogent reason or sufficient grounds with her two minor child. It is shown from the cause title of the maintenance case that three children namely, Bibi Amrana, Bibi Nazrana and Md. Intakhab reside with the opposite party no.1 on the date of filing of the application but the fact remains that Bibi Nazrana resides with the petitioner and therefore, no maintenance should be granted for Bibi Nazrana.

4. It is not in dispute that the parties are legally wedded husband and wife. The opposite party no.1 along with two children resides elsewhere. Three children are being maintained by the petitioner. The petitioner works as a daily wage labourer or sometimes as mason and it is not possible financial for him to pay maintenance at the rate of Rs.5,000/- per month to the opposite party no.1.

5. I have heard the learned advocate for the petitioner at length. I have also perused the impugned judgment, it is not



in dispute that neither of the parties could provide any document to show the income of the petitioner. 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)*.

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

7. 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 and her one minor child are entitled to get maintenance at the rate of Rs.4,000/- per month.

8. The quantum of maintenance granted by the Trial Court in Maintenance Case No. 295 of 2018 is accordingly, modified.

9. 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.

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

11. The instant revision is partly allowed.

(Bibek Chaudhuri, J)

mdrashid/-

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

