

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.420 of 2019**

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

SIRICHAN VISHWAKARMA @ SIRICHAN MISTRI @ SRICHAND
VISHWAKARMA Son of Late Sukhdev Mistri @ Sukhdev Vishwakarma
Resident of Village and P.O. and P.S.- Jamhor, District- Aurangabad

... .. Petitioner/s

Versus

1. The State of Bihar
2. Anju Devi Wife of Srichan Vishwakarma @ Sirichan Mistri @ Srichand Vishwakarma Resident of Village and P.O. and P.S. - Jamhor, District- Aurangabad and at present residing at Village - Kharanti, P.O.- Dosma, P.S.- Rafigang, District- Aurangabad

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Yugal Kishore, Adv.

For the Respondent/s : Mr. Satyendra Narayan Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 29-01-2024

Heard learned Advocate for the petitioner as well as learned APP for the State.

2. The petitioner/husband has challenged an order of maintenance being Maintenance Case No. 100 of 2014, passed by the learned Principal Judge, Family Court at Aurangabad on 31st March, 2018, directing the petitioner to pay maintenance allowance @ Rs. 10,000/-per month to the opposite party no. 2 and the minor daughter of the parties.



3. On perusal of the materials on record and the impugned order, it is ascertained that the marriage between the parties is not disputed. It is also found that opposite party no. 2 is living separately with her minor daughter. Therefore, the petitioner is under obligation to pay maintenance allowance to the opposite party no.2 and their daughter.

4. Only issue in the instant revision is the quantum of maintenance. In her petition, the opposite party no. 2 stated that the petitioner has a shop under the name and style of Srichan Vishwakarma, where he sells iron items and asbestos sheets. He earns considerable money through his business. Moreover, he has income from agricultural land.

5. On the other hand, the petitioner has denied the allegation made out by the opposite party no. 2 in her application under Section 125 of the Cr.P.C. in respect of his income. He has pleaded that he is a day labourer under a mason and he earns his personal source of sustenance working as a day labourer.

6. In **Anju Garj Vrs. Deepak Kumar Garg**, reported in **AIR online 2022 SC 306**, the Hon'ble Supreme Court relied on the earlier decisions of the Apex Court in paragraph-9 as hereunder:-

“9. At the outset, it may be noted that Section 125 of the Cr.P.C. was conceived to ameliorate the agony,



*anguish and financial suffering of a women who is required to leave the matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children as observed by this Court in **Bhuwan Mohan Singh Vrs. Meena and Ors..***”

7. The Hon’ble Apex Court further held that even the opposite party/husband does not have sufficient means, he being an able body person, capable of work is under obligation to maintain his wife and minor daughter.

8. In a recent decision passed by a Coordinate Bench of the Allahabad High Court in **Kamal Vrs. State of U.P. (Criminal Revision No. 461 of 2023)**, decided on 25.01.2024, it is held by a learned Single Judge that the income of the husband shall be assessed on the basis of Minimum Wages Act. If the principle is applied, then this Court safely presume that the petitioner earns Rs.12,000/- per month. 1/3 of the said sum come to Rs. 4,000/-. The opposite party no. 2 is entitled to get Rs. 4,000/- per month from the petitioner for herself and her minor daughter.

9. Therefore, the impugned order with regard to the quantum of maintenance is modified. The petitioner is directed to pay a sum of Rs. 4,000/- per month for the maintenance of the



opposite party no. 2 and her minor daughter from the date of filing of the application under Section 125 of the Cr.P.C. within 10th of each succeeding months. The arrear maintenance shall be paid as per the direction fixed by the trial court in execution proceeding.

10. With the above order, the instant revision is disposed of.

(Bibek Chaudhuri, J)

pravinkumar/-

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CAV DATE	
Uploading Date	
Transmission Date	

