

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No. 327 of 2022

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

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Dhananjay Kumar Tiwary @ Dhananjay Tiwary, Son of Late AShok Tiwary
Resident of Village- Mangolapur Mathiya, Police Station- Jalalpur, District -
Saran (Chapra), At present residing at House No. 37 Gali No. 25 Molar Band
Extension, Police Station- Badarpur, District - South Delhi.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Neeraj Devi @ Neeraj Tiwary Wife of Dhananjay Kumar Tiwary @
Dhananjay Tiwary, Daughter of shri Lalan Pandey Resident of Village-
Bareja, Police Station- Daudpur, District- Saran (Chapra).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sumit Kumar, Adv Mr.Brajesh Kumar Singh, Adv
For the State	:	Ms.Shaheen Begum, APP
For the Opposite Party No.2:		Mr.Ashok Kumar Mishra, Adv Ms.Prathibha Srivastava, Adv

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

- 6 20-03-2024 1. The instant revision is directed against an order
passed by the learned Principle Judge, Family Court, Saran at
Chapra in Maintenance Case No. 5 of 2014 being a proceeding
under Section 125 of the Cr.P.C., whereby and whereunder, the
learned Trial Judge directed the opposite party to pay Rs.
10,425/- per month as maintenance to the petitioner and her son,
within tenth of each succeeding month.
2. The husband/opposite party of Maintenance Case
No. 5 of 2014 is the petitioner before this Court.
3. It is not in dispute that the marriage of the



petitioner was solemnized with the opposite party on 19th of April, 2000. She left her matrimonial home on 16th of March, 2011. The petitioner tried to settle the dispute between him and his wife but the opposite party denied to stay with him. The petitioner filed a suit for divorce against the opposite party, but the said suit was dismissed on contest on 15th of June, 2022. Subsequently, the opposite party filed a complaint under Section 498A of the I.P.C. The said case is still going on.

4. By filing the application under Section 125 of the Cr.P.C., it is stated by the opposite party that the present petitioner drove her away from his house on 29th of May, 2013, after snatching all her clothes, jewellery and other articles. The opposite party in her petition under Section 125 of the Cr.P.C. also states that the present petitioner is an employee in Customs Department in Delhi and earns Rs. 25 thousand per month. He also possesses five *bighas* of land and earns Rs. 2 lakh from cultivation. The petitioner also possesses a double-storeyed house in Badarpur, Delhi and earns Rs. 40 thousand as a rental from the tenants of the said house.

5. On the contrary, the opposite party has no source of income and she is fully dependent upon her father. She and her



minor child are also fully dependent upon her father.

6. The opposite party / petitioner herein admitted his marriage to the present opposite party. However, he denied that he works in the Customs Department in Delhi and earns Rs. 25 thousand. It is submitted by the opposite party / petitioner herein that he is engaged in a private job and earns Rs. 12 thousand per month. Apart from the said income, the petitioner has no source of money.

7. The learned Trial Judge, on due consideration of the evidence on record, directed the petitioner to pay maintenance at the rate of Rs. 10,425/- per month for the opposite party and her minor child. Since neither of the parties would produce any document supporting the income of the petitioner, the Trial Court held that the income of the opposite party shall be considered as industrial worker of semi-skilled type work in category "A" area (Delhi) and as per the Minimum Wages Act. The Court can fix his notional income at the rate of Rs. 695/- per day and cumulative monthly income would be Rs. 20,850/-. The Trial Court granted half of the amount towards maintenance in favour of the opposite party and the minor son of the parties.

8. On careful perusal of the materials on record as



well as the impugned judgement, this Court finds that the trial Court committed only one error to the effect that the opposite party is entitled not to get 50% of the income of the petitioner but she is entitled to get 1/3 of the income of the petitioner. Thus, the opposite party is entitled to get Rs. 6,750/- per month as maintenance from the petitioner for herself and her minor son.

9. The amount of the maintenance allowance is accordingly modified.

10. The petitioner is directed to pay Rs. 6,750/- per month to the opposite party towards maintenance for her and her minor child within tenth of each succeeding month from the month of May, 2021.

11. All other directions made by the learned Principle Judge, Family Court, Saran at Chapra shall remain in force.

12. With the above order, the instant revision is disposed of on contest.

13. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

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