

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No 364 of 2024**

**In
Miscellaneous Appeal No 660 of 2023**

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

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Virendra Das @ Virendra Gupta Son Of Late Shital Das Resident Of Village -
Parbatta, P.S. - Parbatta, District - Khagaria

... .. Petitioner/s

Versus

1. Sarita Devi Wife Of Virendra Kumar Gupta @ Virendra Das Residing
Presently At Sarita Devi, D/O. Late Bhola Das, Resident Of Village -
Baburampur, Tola - Khas, P.O. - Majhali Motihari, P.S. - Belhar, District -
Banka
2. Rohit Kumar Son Of Virendra Kumar Gupta @ Virendra Das Residing
Presently At Sarita Devi, D/O. Late Bhola Das, Resident Of Village -
Baburampur, Tola - Khas, P.O. - Majhali Motihari, P.S. - Belhar, District -
Banka

... .. Respondent/s

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Appearance :

For the Petitioner/s : M/s Subodh Kr Jha, Sarveshwar Tiwary, Advocates
For the Respondent/s : Mr Brij Nandad Prasad, Advocate

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CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

ORAL JUDGMENT

Date : 25-10-2024

With the consent of both the parties, heard finally.

2 This revision petition has been preferred by the petitioner being aggrieved with the judgment dated 24.08.2023 whereby and where under the learned Family Court, while deciding the application under Section 125 of the Cr P C filed by the opposite party – wife, directed the petitioner to pay a monthly maintenance amount of Rs 20,000/- to the opposite party – wife,



and his minor son from the date of submission of application, i e, 27.02.2019.

3 Undisputedly, opposite party No 1 is the legally wedded wife of the petitioner. Their marriage was solemnized in the year, 1986 and from the admission made by the petitioner himself, it is also apparent that as of now, without getting any divorce from the opposite party – wife, he performed his second marriage in the year, 1992.

4 It is submitted by the learned counsel for the petitioner that in the year, 1989, a girl child was born out of their wedlock and immediately thereafter, the opposite party – wife left the child with the petitioner and went to her *Maike* and did not return. Thus, it is clear that the opposite party – wife herself left the house of the petitioner and is residing separately since 1989. Therefore, on this ground alone, she is not entitled to get any maintenance as she herself left the house of the petitioner. Learned counsel further argued that since the opposite party – wife is residing separately since 1989 and did not return to the house of the petitioner and they have not cohabited, therefore, opposite party No 2 and other male child are not the legitimate or illegitimate sons of the petitioner. Therefore, opposite party No 2 is also not entitled to get any maintenance from the petitioner. Lastly, it is submitted by



the learned counsel that the learned Family Court, while passing the order of maintenance also did not consider the fact that in the year, 2019 – 2020, the petitioner, who is a Teacher, was getting a monthly salary near about Rs 25,000/- and he has a second wife and two children from his second wife. The learned Family Court directed the petitioner to pay monthly maintenance of Rs 20,000/- from the date of submission of application is also on much higher side.

5 Learned counsel for the opposite party – wife opposes the argument raised by the learned counsel for the petitioner and submits that considering the entire evidence available on record, the learned Family Court has rightly passed the impugned order.

6 I have heard learned counsel for both the parties, perused the impugned order as well as evidence adduced by both the parties before the learned Family Court.

7 It was the pleading of the petitioner – husband that after the born of girl child in the year 1989, the opposite party -wife herself left the house of the petitioner and did not return in the house of the petitioner and they also did not cohabit thereafter. However, during the cross-examination of the opposite party – wife, on being questioned by the petitioner – side, the opposite party -wife categorically stated that she frequently visited her



Sasural but she was ousted after fifteen days after assaulting her and was never kept with care. She further categorically stated that one year prior also, the husband ousted her from his house after assaulting her. The above statement of opposite party – wife has not been duly rebutted nor any contrary suggestion has been made by the petitioner - husband. The petitioner – husband himself admitted the fact that in the year 1992, without getting any divorce from the opposite party – wife, he performed his second marriage with another lady.

8 Thus, from the above admission made by the petitioner himself, the learned Family Court rightly arrived at the conclusion that the opposite party – wife has sufficient cause to reside separately with the petitioner – husband. Since the statement of opposite party – wife made in paragraphs 7 and 9 of her cross examination has not been duly rebutted by the petitioner – husband nor any contrary suggestion has been made, therefore, it is also established that opposite party No 2 is the legitimate son of the petitioner. Therefore, the finding recorded by the learned Family Court in this regard is also in accordance with the evidence available on record.

9 With regard to the quantum of maintenance amount is concerned, the learned Family Court has directed the petitioner to



pay a monthly maintenance amount of Rs 20,000/- to the opposite party – wife and her minor son from the date of submission of application, i.e., February, 2019. However, from perusal of the statements of the opposite party – wife and her son, it transpires that the opposite party -wife herself stated that Rs 17,000/- per month is sufficient to her livelihood. The statement of the petitioner has been recorded before the learned Family Court on 24th of January, 2020 wherein, in paragraph 8, he has categorically stated that he is getting monthly salary of Rs 25,000/-. Thus, it is clear that in the year, 2019 – 2020, the petitioner was getting a monthly salary of Rs 25,000/-. He has his second wife and the two children out of the wedlock of his second marriage who are also residing with the petitioner.

10 Considering the above, the amount of maintenance, i.e., Rs 20,000/- from the date of submission of application appears to be on higher side.

11 Therefore, it would be appropriate to direct the petitioner to pay a monthly maintenance of Rs 10,000/- in total to the opposite parties from the date of submission of application under Section 125 of the Cr P C.

12 However, the opposite party – wife is on liberty to file an application under Section 127 of the Cr P C for



enhancement of the maintenance amount on the ground of increment in the salary of the petitioner, if she is so advised.

13 With the aforesaid observation, this revision petition is partly allowed.

14 Records of the lower Court be sent back along with the copy of this order for necessary compliance.

(Arvind Singh Chandel, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.10.2024
Transmission Date	30.10.2024

