

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No 396 of 2023

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

Abdhesh Kumar Sah @ Awadhesh Kumar Sah Late Yogendra Sah Resident of Mahananda Pauli, P.S. - English Bazar, Distt. - Maldah (West Bengal)

... .. Petitioner/s

Versus

1. Sarita Devi Wife of Abdhesh Kumar Sah @ Awadhesh Kumar Sah Resident of village - Balwahati, P.S. - Bakhtiyarpur O.P. Balwahatt, Distt. - Saharsa
2. Vishundev Sah Son of Abdhesh Kumar Sah @ Awadhesh Kumar Sah Resident of village - Balwahati, P.S. - Bakhtiyarpur O.P. Balwahatt, Distt. - Saharsa
3. Riya Kumari D/o Abdhesh Kumar Sah @ Awadhesh Kumar Sah Resident Present - R.D.W. Man, NJP, Siliguri, Railway Station, Loko Road, P.S. and distt. - Siliguri, West Bengal
4. Krishna Sah Son of Abdhesh Kumar Sah @ Awadhesh Kumar Sah Resident of village - Balwahati, P.S. - Bakhtiyarpur O.P. Balwahatt, Distt. - Saharsa

... .. Respondent/s

Appearance :

For the Petitioner/s : M/s Kamlesh Kr, Kahkashan Alam, Advocate
For the Respondent/s : M/s Satish Kr Singh, Dinesh Maharaj, Advocates

CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

CAV JUDGMENT

Date : 04-12-2024

This revision petition has been preferred by the petitioner being aggrieved with the order dated 28.04.2022 passed by the learned Principal Judge, Family Court, Saharsa in Miscellaneous Case No 79 of 2010 whereby and where under the learned Family Court allowed the application for grant of maintenance filed under Section 125 of the Cr P C by Opposite Party No 1 Sarita Devi and directed the petitioner to pay a monthly



maintenance of Rs 5,000/- to Opposite Party No 1 and Rs 2,000/- to Opposite Party No 4 Krishna Sah, i e, minor son of Opposite Party No 1.

2 Before the learned Family Court, Opposite Party No 1 filed an application under Section 125 of the Cr P C, inter alia, on the ground that her marriage was solemnized with the petitioner herein on 26.05.1999 according to the Hindu rites and customs. Out of their wedlock, three children (Opposite Parties No 2 to 4) were born. It is alleged that after the marriage, Opposite Party No 1 was subjected to cruelty on account of demand of dowry by the petitioner herein and in the year 2009, he left her along with three children in her *Maike* and since then, she is residing in her *Maike*. She is unable to maintain herself and her children. The petitioner herein is working in the Railway Department and is getting a monthly salary of Rs 20,000/- and he also owned a house and also earns Rs 5,000/- as house rent.

3 In his reply, the petitioner herein admitted the fact that Opposite Party No 1 is his legally wedded wife. He also admitted that Opposite Party No 2 Vishundeo Sah and Opposite Party No 3 Riya Kumari are his legitimate children. However, with regard to Opposite Party No 4 Krishna Sah, he pleaded that Krishna Sah is not his legitimate or illegitimate son. According to the pleadings,



Opposite Party No 1 herself left the house of the petitioner as the petitioner is a deaf and dumb person and, therefore, she herself does not want to live with him. It was further pleaded that while Opposite Party No 1 – wife left the company of the petitioner, Opposite Party No 2 Vishundev Sah and Opposite Party No 3 Riya Kumari remained with the petitioner. It was further pleaded that thereafter, Opposite Party No 1 is living adulterous life and due to that, Krishna Sah (Opposite Party No 4) born. Therefore, Krishna Sah is not the legitimate or illegitimate son of the petitioner. Since Vishundev Sah and Riya Kumari are residing with the petitioner, therefore, they are not entitled to get any maintenance. Krishna Sah is not the legitimate or illegitimate son of the petitioner, therefore, on this ground, he is also not entitled to get any maintenance and as Opposite Party No 1 is living adulterous life, therefore, on this ground, she is also not entitled to get any maintenance.

4 After recording of the evidence adduced by both the parties and after hearing the parties, the learned Family Court, vide impugned order dated 28.04.2022, arrived on the conclusion that Vishundev Sah and Riya Kumari are residing with the petitioner herein, therefore, they are not entitled to get any maintenance. It was also held by the learned Family Court that the petitioner is



unable to establish the fact that Krishna Sah is not his legitimate or illegitimate son and, as it was found by the learned Family Court that Krishna Sah is the legitimate child of the petitioner, allowed his application for grant of maintenance. The learned Family Court also arrived at the conclusion that the petitioner also failed to prove the fact that Opposite Party No 1 is leading adulterous life, therefore, the learned Family Court also allowed maintenance in favour of Opposite Party No 1.

5 Learned counsel for the petitioner would submit that in his pleading, the petitioner categorically stated that Opposite Party No 1 is leading adulterous life and due to that Krishna Sah born, therefore, on this ground, both of them are not entitled to get maintenance but the learned Family Court did not consider this aspect. The petitioner made a prayer for conducting DNA Test regarding legitimacy of Krishna Sah but the learned Family Court did not do so and, without conducting any DNA Test, wrongly arrived on the conclusion that Krishna Sah is the legitimate son of the petitioner. According to the counsel, since Krishna Sah is not the legitimate child of the petitioner, therefore, this fact is also established that Opposite Party No 1 – wife is leading adulterous life. Therefore, both Opposite Party No 1 and Opposite Party No 4 are not entitled to get any maintenance. The learned Family Court,



while passing the order in their favour, did not consider the material evidence available on record.

6 I have heard learned counsel for the petitioner and perused the entire evidence adduced by both the parties before the Family Court.

7 In support of her pleadings, Opposite Party No 1 examined herself as well as other five witnesses. Petitioner herein did not examine himself before the Family Court for the reasons best known to him. However, in his favour, his sister Veena Devi and his son Vishundev Sah were examined.

8 According to the pleadings of Opposite Party No 1 – wife, the petitioner left her in the year, 2009. In her Court statement also, she deposed accordingly. However, as per the statement of petitioner's witnesses No 1 and 2, i e, his sister and son, the wife Sarita Devi left the house of the petitioner in the year, 2007 but the petitioner herein did not dare to examine himself to establish this fact. For the sake of argument, if it is presumed that in the year 2007, she left the company of the petitioner but there is no evidence available on record which shows that there was no cohabitation between them. Petitioner herein is also unable to establish the fact that Opposite Party No 1 – wife was living adulterous life with another person. Since the petitioner and



Opposite Party No 1 were legally wedded husband and wife, no divorce has taken place between them and there is also no evidence available on record which establishes that there was no cohabitation, therefore, as contained in Section 112 of the Evidence Act also, presumption can be drawn that Krishna Sah is the legitimate son of the petitioner herein.

9 Thus, the learned Family Court rightly arrived on the conclusion that Krishna Sah is the legitimate son of the petitioner and also rightly arrived at the conclusion that petitioner is unable to establish the fact that Opposite Party No 1 is living adulterous life. The finding recorded by the learned Family Court is based upon the evidence available on record and according to law governing the field.

10 I do not find any perversity and illegality in the impugned order dated 28.04.2022 passed by the learned Principal Judge, Family Court, Saharsa.

11 Accordingly, this revision petition, which is having no merit, is hereby dismissed at the stage of admission itself.

(Arvind Singh Chandel, J)

M.E.H./-

AFR/NAFR	NAFR
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