

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1138 of 2018

Arising Out of PS. Case No.- Year-1111 Thana- District- Munger

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Manoj Kumar @ Manoj Kumar Sharma, S/o Late Nand Kishore @ Lali Nand Kishore Sharma, R/o Near Munger Anjuman, Dilawarpur, P.S.- Kotwali, District- Munger.

... .. Petitioner/s

Versus

Priyanka Kumari Sharma, W/o Manoj Kumar @ Manoj Kumar Sharma, D/o Prabhat Kumar Sharma, R/o Safiabab, P.S.- Naya Ram Nagar, District- Munger.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajit Kumar Singh
For the Respondent/s : Ms. Asha Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

7 22-01-2024 1. An order of maintenance passed by the learned Principal Judge, Family Court, Munger on 28th of July, 2018, in Maintenance Case No. 141 of 2014, directing the petitioner / husband to pay maintenance allowance at the rate of Rs. 6,000/- per month, in favour of Opposite Party No. 2 along with one time litigation cost, amounting to Rs. 10,000/- from the date of filing of application, is under challenge in the instant revision.

2. It is the case of the Opposite Party, who happened to be the petitioner in the Trial Court that she is legally wedded wife of one Manoj Kumar @ Manoj Kumar Sharma, the present petitioner herein and she was refused and neglected by her husband. Therefore, she is entitled to get maintenance allowance



from her husband. The Opposite Party came up before the Court with a specific case that her marriage was solemnized with the petitioner in accordance with Hindu rites and ceremonies in the year 2005. Subsequently, in the year 2007, both the husband and wife went to Mugalsarai, UP in order to attain marriage of the cousin brother of the petitioner. From Mugalsarai, the Opposite Party disappeared. After a thorough search, she was recovered on 10th of August, 2007 from a place under P.S. Yadhavpur, Kolkata, West Bengal with another person, namely Md. Wasim. She made a statement on 10th of August, 2007, in presence of witnesses, that in order to marry Md. Wasim, she converted to Islam and she wants to stay with the said Md. Wasim as his wife.

3. It is contended by the learned Advocate for the petitioner that the learned Trial Judge failed to consider that from 10th of August, 2007, the Opposite Party herself denied to stay with her husband and lead conjugal life with the petitioner. The learned Trial Judge also failed to consider that a lady who has married for the second time during the subsistence of her first marriage is not entitled to maintenance.

4. It is found from the supplementary affidavit filed by the learned Advocate for the petitioner that on behalf of the



petitioner as many as four witnesses were examined. They corroborated the case of Opposite Party / the petitioner herein, but the petitioner himself has not been examined in the Trial Court.

5. It is true that if a married lady voluntarily leaves the association of her husband and take shelter with another person in some other place and expresses her desire that she wants to live with the said person as his wife, the petitioner / wife is not entitled to get any maintenance. However, the said fact is to be proved by adducing evidence by the Opposite Party. The Opposite Party has not been examined before the Trial Court. The evidence of other witnesses are corroborative in nature which has no value, if the Opposite Party is not examined. At the same time, the Trial Court is required to consider as to whether the petitioner is entitled to get maintenance from her husband even when she has been residing elsewhere with another person, named, Md. Wasim.

6. Considering such circumstances, I am inclined to set aside the impugned order, passed by the learned Principal Judge, Family Court, Munger and direct him to examine the Opposite Party / the petitioner herein, within a period of one month from the date of communication of the order. After



examination and cross-examination of the petitioner, the Trial Judge shall write a fresh judgement in the above-mentioned maintenance case. The entire exercise shall be concluded within a period of three months from the date of communication of the order.

7. The instant revision is thus allowed with above direction.

(Bibek Chaudhuri, J)

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