

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.42 of 2021

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

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NISHANT KUMAR S/o Late Balmiki Pd. Singh R/o Mohalla- Sivpuri,
Ramchanderpur, At- Biharsharif, P.S.- Laheri, District- Nalanda

... .. Petitioner/s

Versus

PRITI KUMARI D/o Ashok Singh, W/o Nishant Kumar R/o village- Ramsen
Tola, Ward No. 5, P.S.- Barahiya, District- Lakhisarai

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dr. Anjani Pd. Singh, Advocate
For the Opposite party	:	Mr. Madan Prasad Singh, Advocate
		Mr. Dharmendra Kumar Raju, Advocate
For the Respondent/s	:	Mrs. Asha Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

10 09-04-2024 The instant revision is directed against an order dated 25th January 2020 passed in Maintenance Case No. 13/2017 by the learned Principal Judge, Family Court, Lakhisarai whereby and whereunder the learned Principal Judge, Family Court granted maintenance allowance in favour of the opposite party/wife at the rate of Rs. 7,000/- per month from the date of the filing of the case.

2. It is submitted by the learned Advocate for the petitioner/husband that according to the case of the opposite party her marriage was solemnized with the petitioner on 25th June 2012, however, the said marriage was not solemnized with the free consent of the petitioner. The petitioner was forcibly



picked up on gunpoint and compelled to marry the opposite party, therefore, the said marriage is not a valid and subsisting marriage. After the marriage, the family members of the bride has sent her to the house of the petitioner. She stayed there for about one and a half years and then left the house. Thereafter, she came to the house of the petitioner and stayed there for about 20 days. It is also submitted by the learned Advocate for the petitioner on instruction that the said marriage was not consummated and there is no issue born in the wedlock between the parties.

3. It is, however, found from the record that the petitioner did not file any suit for annulment of marriage. He filed a suit for divorce. A suit for divorce is maintainable against an legally married wife. Moreover, he declared in another proceeding that he would keep his wife with full dignity and honor. On his prayer, the instant revisional application was sent to the Patna High Court Mediation Centre for amicable settlement. The petitioner also declared there that he would keep his wife properly with dignity and honour in his house. But the opposite party did not want to go to his house and she is interested in getting the maintenance allowance.

4. While dealing with the legality, propriety and



validity of the impugned order dated 25th June, 2020. The issue as to whether the opposite party is interested to get maintenance allowance or not and she is not inclined to lead happy and peaceful conjugal life are not the relevant facts to be considered. From the forgoing paragraphs, it is ascertained that the petitioner admitted the opposite party as his wife.

5. Indisputably, the opposite party has been staying at her paternal home, she has no source of income. On the other hand, the petitioner earns Rs. 27,000/- per month. It is found from the record that a longstanding dispute is going on between the parties over matrimonial relationship. Thus, this Court shares the same view with the learned Principal Judge, Family Court, Lakhisarai that the opposite party is entitled to get maintenance. The disputed issue, at present, is the quantum of maintenance to be paid by the petitioner to the opposite party. The learned Advocate for the petitioner has filed a supplementary affidavit during pendency of the instant revision. In the supplementary affidavit, he has annexed an order passed in Matrimonial (Divorce) Suit No. 142 of 2019 on 07th April, 2021 where the learned Principal Judge, Lakhisarai, passed an order directing the petitioner to pay alimony *pendente lite* at the rate of Rs. 8,000/- per month. Since, the said order was passed



on 7th April 2021, he had no scope to consider the amount of alimony while passing the order of maintenance allowance in Maintenance Case No. 13/2017 on 25th January 2020.

6. However, at present, there are two orders of maintenance/monetary relief in favour of the opposite party. One was passed on 25th January 2020 in Maintenance Case No. 13/2017, where the petitioner was directed to pay Rs. 7,000/- per month and another order was dated 07th April 2021, passed in Matrimonial Suit No. 142 of 2019, directing the petitioner to pay alimony *pendente lite* at the rate of Rs. 8,000/- per month. It is now the legal obligation on the part of the learned Principal Judge to adjust the maintenance amount upon considering the order dated 7th April 2021. Therefore, this Court is of the view that the impugned order requires reconsideration by the trial court so far as it relates to quantum of maintenance is concerned because the petitioner cannot be saddled with the burden of paying maintenance allowance at the rate of Rs. 7,000/- in Maintenance Case No. 13/2017 and again Rs. 8,000/- per month in Matrimonial Case No.142 of 2019, therefore, I am inclined to remit the Maintenance Case no. 13/2017 back to the trial court for reconsideration of the amount of the maintenance allowance to be paid by the petitioner in the light of two different amount



of maintenance passed in two proceedings, in favour of the opposite party, and against the petitioner without making any adjustment of the order.

7. For the reasons stated, the impugned order is set aside. The learned Principal Judge, Family Court, Lakhisarai is directed to decide the case only on limited ground with regard to quantum of maintenance and try to make an adjustment with regard to the maintenance allowance, so that the petitioner may not be burdened with payment of maintenance allowance and alimony *pendente lite* which is in the nature of maintenance during the pendency of Matrimonial Case No. 142/2019.

8. It is submitted by the learned Advocate for the petitioner that the petitioner has been going on depositing a sum of Rs. 7,000/- per month as per order passed by the Maintenance Case No. 13/2017 regularly.

9. The learned Advocate for the opposite party has not disputed the same but submits that the petitioner was directed to pay maintenance from the date of application and not from the date of the order the arrear maintenance has not been paid by the opposite party.

10. The opposite party is at liberty to file execution case before the trial in compliance with Section 128 of the CrPC



for recovery of the arrear maintenance against the petitioner.
The trial court shall pass necessary order upon filing of such application.

11. With the above direction, the instant revision is disposed of.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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