

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.858 of 2018

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

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Raj Kumar Gupta S/o Kanhaiya Lal Gupta, R/o Amra Talab Near Petrol Pump, Kavandiya, P.S.- Sasaram, District- Rohtas.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr.
2. Awantika Devi, D/o Sri Bhagwan Sah, R/o Mohalla- Khilaganj, P.S. Nagar, Sasaram, District- Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mithilesh Kumar Upadhyay, Advocate
		Ms. Tetara Kumari, Advocate
For the Respondent/s	:	Smt. Sahin Begam, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

11 05-02-2024 The instant Revision is directed against an order dated 13th September of 2017, passed by the learned Principal Judge, Family Court, Rohtas at Sasaram in Maintenance Case No. 107 of 2011 directing the petitioner to pay maintenance at the rate of Rs. 3,000/- in favour of the opposite party no.2 /wife herein.

2. It is submitted by the learned Advocate for the petitioner that marriage of the petitioner was solemnized on 5th June, 2009. Though, this is the case of the opposite party that she was expelled from the matrimonial home on 20th May, 2011, however, the fact remains that the petitioner did not stay at her matrimonial home more than 10/20 days. After 10/20 days, he



fled away from her matrimonial home took shelter at her paternal home and never return. The petitioner made several endeavour to bring her back but she refused to stay with the petitioner at her matrimonial home.

3. It is further submitted on behalf of the petitioner that while staying at her paternal home, that the opposite party gave birth to two children. The petitioner came up with specific application before the trial court that the said two children who were given birth by the opposite party are not children born in the wedlock between him and the opposite party. He prayed for holding medical examination of the opposite party by filing an application on 20th August, 2018 in order to ascertain the paternity of the said two children. The said application was disposed of on 26th February, 2019 directing the opposite party to appear before the trial court.

4. This court fails to appreciate as to how the petition filed by the petitioner on 28th August, 2018 was entertained by the trial court when the maintenance case was disposed of on 13th September, 2017. After passing of the order of maintenance and disposal of the application under Section 125 of the Cr.P.C., the trial Judge was not in seisin over the matter. Therefore, the trial court acted in absolute illegality and



with material irregularity in entertaining the application filed by the petitioner on 28th August, 2018 by passing an order dated 26th February, 2019. Therefore, the present petitioner cannot claim any advantage of the said order saying that in spite of the order dated 26th February, 2019, the opposite party did not appear before the trial court.

5. In the trial court, the opposite party deposed as PW-1. The petitioner has also laid his evidence.

6. Considering the evidence on record, the trial court granted maintenance order at the rate of Rs. 3,000/- per month.

7. Considering the present day market price and bare minimum need of a person, this court is of the view that the order of maintenance is absolutely justified and not in seisin. Therefore, I do not find any merit in the instant Revision and accordingly, the same is dismissed.

8. However, the petitioner is at liberty to make necessary application under Section 127 of the Cr.P.C., if he is so advised for modification of the maintenance allowance.

(Bibek Chaudhuri, J)

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