

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.560 of 2023

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

CHANDRAMA KUMAR YADAV ALIAS CHANDRAMA YADAV ALIAS
LALAN ALIAS LALAN KUMAR S/O - BHUPENDRA PRASAD YADAV
RESIDENT OF VILLAGE - JHITKIYA TOLA, LAXMINIYA, WARD NO. -
05, P.O. - GHAILARH, P. S. - MADHEPURA (GHAILARH O.P.)

... .. Petitioner/s

Versus

1. The State of Bihar
2. BINDULA KUMARI ALIAS SONI KUMARI DAUGHTER OF KAMAL
KISHORE YADAV ALIAS JAYBALAV YADAV RESIDENT OF
VILLAGE - ENERVA, P.O. - GHAILARH, P. S. - MADHEPURA
(GHAILARH O.P.)

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Kumari Rashmi
For the State	:	Mr. Humayou Ahmad Khan, APP

CORAM: HONOURABLE MR. JUSTICE ARVIND SINGH CHANDEL
ORAL JUDGMENT

Date : 11-11-2024

No one appears on behalf of the opposite party no.2

though notice has been duly served upon opposite party no.2.

2. Lower Court record is available.

3. Heard finally.

4. This revision petition has been preferred by the petitioner being aggrieved with the order dated 12.07.2023 passed by the Principal Judge, Family Court, Madhepura in Misc. (Maintenance) Case No. 68 of 2018, whereby and whereunder the learned Family Court has allowed the application of opposite party no.2 filed under Section 125 of Cr.



P.C. and directed the petitioner to pay monthly maintenance amount of Rs. 5000/- from the date of filing of the application i.e. 07.07.2018.

5. The opposite party no. 2 has filed an application before the Family Court *inter alia* on the grounds that her marriage was solemnized with the petitioner in the month of March, 2015 according to the Hindu Rites and Customs. After marriage she was subjected to cruelty by the petitioner on account of demand of dowry and finally she was ousted from the house in the month of September, 2017 and since then she is residing in her *Maika*. She is unable to maintain herself and petitioner has sufficient means to maintain her as he refused to maintain the opposite party no.2/wife.

6. In his reply, the petitioner herein denied the marriage with opposite party no. 2 and pleaded that opposite party no.2 is not his legally wedded wife. Their marriage was never solemnized. Virtually, he got married with one Kalpana Kumari in the year 2007. It was further pleaded by the petitioner that in the year 2015, Kalpana Kumari legally wedded wife of the petitioner filed a case vide Madhepura P.S. Case No. 240 of 2015 against him and thereafter, the opposite party no. 2 concocted a false story and filed the application under Section



125 of Cr. P.C. It was further pleaded by the petitioner that opposite party no.2 is also known as Soni Kumari and she got married with one Vijay Kumar Yadav earlier. Thereafter, she filed a complaint case bearing Case No. 480 of 2012 before the Court of C.J.M., Saharsa in which the names of the parents and other relatives of the opposite party no.2 is also mentioned as witnesses. Since opposite party no.2 is not legally wedded wife of petitioner, she is not entitled to get any maintenance from the petitioner.

7. After recording the evidence of both the parties, the learned Family Court vide impugned order dated 12.07.2023 arrived at the conclusion that opposite party no.2 is the legally wedded wife of the petitioner and allowed her application and directed the petitioner to pay monthly maintenance of Rs. 5000/- as mentioned earlier in the impugned judgment.

8. The learned counsel for the petitioner submits that there are sufficient evidence available on record which shows that Kalpana Kumari is the legally wedded wife of the petitioner. There is also sufficient evidence available on record to show that his marriage with Kalpana Kumari was solemnized in the year 2007. He further submits that there is also evidence available on record to show that the opposite party no.2 was also



known as Soni Kumari and she got her marriage with one Vijay Kumar Yadav but the learned Family Court without considering these aspects wrongly arrived at the conclusion that opposite party no.2 is the legally wedded wife of the petitioner and on which basis passed such order of maintenance which is liable to be set aside.

9. Heard learned counsel for the petitioner.

10. Perused the impugned order as well as the entire evidence both orally and documentary submitted by both the parties before the Family Court.

11. As per the pleading and evidence of opposite party no.2, her marriage was solemnized with the petitioner in the month of March, 2015. There is no dispute on the point that the name of father of opposite party no.2 is Kishore Kumar Yadav and name of her mother is Sarswati Devi. The witness no.4 of the opposite party no. 2 namely Mahendra Yadav is the maternal father (*Nana*) of the opposite party no.2. In his cross-examination, in para-5, he categorically admitted the fact that other name of opposite party no.2 is Soni Kumari. Though the opposite party no.2 denied this fact but Exhibit- E filed by the petitioner which is a part of record of the Family Court clearly shows that one Soni Kumari filed a complaint being Case No.



480 of 2012 before C.J.M., Saharsa against one Vijay Kumar Yadav and others for the offences under Section 323, 504, 379, 498(A) of the Indian Penal Code and Section 3/4 of Dowry Prohibition Act mentioning the fact that the said Vijay Kumar Yadav was the husband of the complainant Soni Kumari. In the said complaint, mother and father of opposite party no.2 in this petition has also listed as witnesses of the complainant and in the said complaint, it was also categorically mentioned that they are mother and father of the said Soni Kumari. There is no evidence available on record to show that apart from opposite party no.2, any other sister of opposite party no.2 namely Soni Kumari was in existence.

12. Thus, it is clear that the said complaint, which was filed in the year 2012, Soni Kumari has mentioned the fact that she was legally wedded wife of one Vijay Kumar Yadav. The evidence further clearly shows that Soni Kumari is the another name of opposite party no.2 and there is no other lady in the name of Soni Kumari is in existence.

13. Perusal of the other documents submitted by the petitioner herein before the Family Court also shows that Kalpana Kumari mentioning her as a legally wedded wife of the petitioner also lodged an F.I.R. and on the basis of the said



offence under Sections 498A and 494 and other offences of the Indian Penal Code have been registered against the petitioner. The Exhibit-A submitted by the petitioner herein also shows that an application under Section 9 of the Hindu Marriage Act has also been filed by the petitioner against Kalpana Kumari which was decided in favour of the petitioner. Thus, there is sufficient documentary evidence available on record which shows that Kalpana Kumari is the legally wedded wife of the petitioner.

14. Apart from these, perusal of the statement of the petitioner recorded before the Family Court also shows that in para-12 of his cross-examination the suggestion was made by the counsel for the opposite party no.2 before this witness that petitioner was firstly married with Kalpana Kumari and after some dispute arrived between both the parties, he perform his marriage with opposite party no.2 Thus, from the above suggestion made on behalf of the opposite party no.2 also shows that Kalpana Kumari was the first legally wedded wife of the petitioner.

15. Perusal of the evidence, as discussed above, it is well established that the petitioner has got married with Kalpana Kumari in the year 2007 and it is also established that opposite party no.2 get her marriage with one Vijay Kumar Yadav.



Therefore, the finding of the learned Family Court that the opposite party no.2 is the legally wedded wife is concerned is not in accordance with evidence available on record. Since the opposite party no.2 is not the legally wedded wife of the petitioner rather she is the legally wedded wife of one Vijay Kumar Yadav, therefore, she is not entitled to get any maintenance from the petitioner herein. Accordingly, the impugned order dated 12.07.2023 passed by the learned Principal Judge, Family Court, Madhepura in Misc. (Maintenance) Case No. 68 of 2018 is liable to be set aside and is, hereby, set aside.

(Arvind Singh Chandel , J)

shailendra/-

AFR/NAFR	NAFR
CAV DATE	NA
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