

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.970 of 2019

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

MANOJ KUMAR @ MANOJ KUMAR CHAUDHARY, S/o Mahendra Jaiswal @ Mahendra Chaudhary Resident of Singheshwar Sthan, Gauripur Road, Near High School, P.S.- Singheshwar, District- Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rani Kumari D/o Late Ramakant Bhagat and W/o Manoj Kumar @ Manoj Kumar Chaudhary Resident of Singheshwar Sthan, Gauripur Road, Near High School, P.S.- Singheshwar, District- Madhepura, Present Address- Mal Godam Road, Simri Bakhtiyarpur, P.S.- Simri Bakhtiyarpur, District- Saharsa.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bhaskar Shankar, Adv.
For the Respondent/s : Mr. Binod Kumar, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

4 12-01-2024 The instant revision is directed against an order passed in Misc. Case No.- 89 of 2015, under Section 125 of the Cr.P.C., by the Principal Judge, Family Court, Saharsa, directing the petitioner to pay maintenance allowance @ Rs. 10,000/- per month. The petitioner/husband is aggrieved against the amount of maintenance allowance.

2. It is submitted by the petitioner that the amount of maintenance allowance @ Rs. 10,000/- per month as granted by the learned trial Judge is excessive, in view of the fact that the petitioner does not have any permanent source of income. He



earns his livelihood as a labourer outside Bihar. He does not have such financial position to make payment of Rs. 10,000/- per month to his wife towards maintenance allowance.

3. It is not in dispute that the marriage of the petitioner was solemnized with the opposite party no. 2 in the year 2013. After few days of marriage she returned her paternal home. Again in 2015 she went back to her matrimonial home where she was tortured by her husband both physically and mentally on demand of a sum of Rs. 6,00,000/- for the purpose of purchasing a truck. It is also the case of the opposite party no. 2 that the petitioner works as a Designing Engineer in Banaras and earns more than Rs.50,000/- per month.

4. The petitioner filed a show cause and denied entire allegation made out by the opposite party no.2 in the trial court. He claimed that he earns his livelihood working in another State as a labour.

5. It is submitted by the learned Advocate for the petitioner that the opposite party no. 2 has failed to produce any document in support of the income of the petitioner. She also failed to prove that the petitioner demanded a sum of Rs. 6,00,000/- from the paternal home of the opposite party. The opposite party also failed to produce any document in support of



his income. According to the petitioner, the amount of maintenance is excessive.

6. I have perused the impugned Judgment passed by the learned Principal Judge, Family Court at Saharsa. It is true that neither of the parties was able to produce any document to prove their assets and liabilities. At the same time, this Court is not unmindful to note that the wife is the best person, who is able to say about the income of her husband. If the wife makes a false statement regarding the income of the husband, the onus shifts upon the husband to disprove the said fact by producing documents. Initial burden approving the income of the husband was discharge by the wife and evidence is led on these behalf follow. Therefore, it was the duty of the petitioner to prove that he is not a Designing Engineer and he does not have income of Rs. 50,000/-. The petitioner had also the duty to come before the Court with the statement of his income. The petitioner failed to discharge his onus.

7. Accordingly, the trial court rightly held that the petitioner earns at least Rs. 50,000/- per month. It is also found from the impugned order that during the pendency of the case, the petitioner was directed to pay interim maintenance of Rs. 5,000/- per month. He accepted the said order and without any



grievance he paid interim maintenance. Now the grievance of the petitioner is that the trial court has doubled the maintenance allowance in his final order.

8. It is pointed out by the learned Advocate for the petitioner/husband that in his show cause petition he stated that he passed Class- 12th and he does not have any qualification of Engineering.

9. Be that as it may, when neither of the parties came up before the trial Court with the positive proof of income of the petitioner, the opposite parties are directed to file affidavit of assets and liabilities in the trial court within one month from the date of this order and the learned trial Judge shall decide the issue as to whether the petitioner has sufficient means to maintain the opposite party no. 2 and if so what will be the reasonable amount for her maintenance.

10. In view of the above discussion, the impugned order dated 26th April, 2019 is quashed. The revisional application is allowed.

11. The trial court is directed to conclude the hearing of the case on the basis of affidavit of assets that will be filed by the parties within six months from the date of this order.

12. In the meantime, without prejudice to the rights



and contentions of the parties, the petitioner is directed to go on paying a sum of Rs. 8,000/- per month to the opposite party no.2 till the disposal of the Misc. Case No. 89 of 2015.

(Bibek Chaudhuri, J)

pravinkumar/-

U		T	
---	--	---	--

