

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1010 of 2019

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

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MUMTAZ @ MUMTAZ ALAM Son of Saleem @ Md. Saleem Resident of
Village - Bijalia, P.S.- Amour, Distt - Purnea.

... .. Petitioner/s

Versus

1. MISRAT KHATOON D/o Md. Sadir Resident of Village - Bijalia, P.S.-
Amour, Distt - Purnea.
2. Abu Talib d/o Md. Sadir Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Nurul Hoda, Advocate
For the Respondent/s : Mr. Nitesh Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 19-03-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The instant revision is directed against an order passed by the learned Principal Judge, Family Court, Purnia on 01.07.2019 in Maintenance Case No.05 of 2016 directing the petitioner to pay maintenance at the rate of Rs.5,000/- per month for his illegitimate child.

3. It is needless to say that as per provision of Section 125 of the Cr.P.C. that (a) if any person having sufficient means neglects or refuses to maintain his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental



abnormality or injury unable to maintain itself, a Magistrate upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance to such child, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct. Therefore, there is no iota of doubt that an illegitimate child is entitled to get maintenance from her biological father.

4. It is submitted by the learned advocate for the petitioner that on the basis of a complaint lodged by the opposite party no.2/wife a case under Sections 376/313 of the I.P.C. was registered against the petitioner. However, after trial the petitioner was acquitted. Petitioner is a married person whose marriage was solemnized in the year 2010, he is having four daughters and one son. Opposite party no.2 also married to another person but her marriage was dissolved by a decree of divorce.

5. During the Trial of the maintenance case, an order was passed by the Trial Court for conducting DNA test of the child along with the opposite party no.2 and the petitioner. Petitioner deposited the cost of DNA test at the rate of Rs.5,000/- but the opposite party no.2 refused to have the DNA test of the child to ascertain the paternity of the said child.



Therefore, the Trial Court was absolutely wrong in directing the petitioner to pay maintenance at the rate of Rs.5,000/- (Rupees five thousand) per month.

6. The learned advocate for the opposite party no.2, on the other hand, refers to the relevant portion of Page-13 of the impugned judgment. The order of DNA test of the child was prayed for by the opposite party no.2 herself, in order to ascertain the biological father of the said child. However, DNA test could not be done because of the fact that the petitioner was directed to spend entire cost for DNA test. However, he denied to bear the entire cost of DNA test and subsequently, he withdrew the sum of Rs.5,000/- (Rupees five thousand) which he deposited.

7. In case of illegitimate child it is absolutely necessary to ascertain the paternity of the child. Only on the basis of paternity of the child a person may be directed to pay maintenance to the child. In the instant case on the prayer made by the opposite party no.2, the Trial Court directed DNA test of the child and the petitioner and the opposite party no.2 but for one reason or the other DNA test has not been done.

8. In view of such circumstances, while setting aside the impugned order dated 01.07.2019, this Court directs the



Trial Court to conduct DNA test of the child and the petitioner and the opposite party no.2 to ascertain the paternity of the child. The cost of the DNA test shall be born of both the parties in equal share. Such DNA test take within four months from the date of this order and report to be submitted before the learned Principal Judge, Family Court, Purnia. On the basis of DNA test report the learned Principal Judge, Family Court, Purnia shall decide Maintenance Case No.05 of 2016 afresh within six months from the date of communication of this order.

9. With the above order, the instant revision is disposed of.

(Bibek Chaudhuri, J)

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