

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1109 of 2019

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

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RUKMANI DEVI Wife of Ghanshyam Biswas Resident of Village - Tarouna,
P.S.- Jalalgarh, District - Purnea

... .. Petitioner/s

Versus

GHANSHYAM BISWAS Son of Sri Gini Lal Biswas Resident of Village -
Tarouna, P.S.- Jalalgarh, District - Purnea

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajit Kumar Singh, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 27-02-2024 Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. On perusal of the impugned judgment passed in Maintenance Case No.237 of 2008 by the learned Principal Judge, Family Court, Purnea on 11.08.2016, this Court finds that the Trial Court came to a finding that the petitioner has sufficient means of income on consideration of fact that her father-in-law transferred 42 decimals of land for her maintenance. Trial Court did not consider the amount of usufructs the petitioner is getting from the said amount. There is no evidence also with regard to the income of the petitioner from the said landed property. In the absence of such evidence it is not possible for the Trial Court to consider the issue as to whether the petitioner has sufficient means to maintain herself



or not. Another factual aspect has not been considered at all. The petitioner being the legally wedded wife of the opposite party has been residing at her paternal home for 35 years. There is no evidence that the opposite party ever tried to bring her back to her matrimonial home. The Trial Court did not consider as to why a married lady would stay at her paternal home, leaving her husband for long 35 years. The period of dissociation between the parties speaks allot about the opposite party role that he refused and neglected to maintain his wife.

3. It is further submitted by the learned advocate for the petitioner that the marriage between petitioner and opposite party has not been severed by a decree of divorce. On the contrary, though, the opposite party pleaded that he has no means, it appears from the evidence that he has solemnized a second marriage.

4. Considering entire aspect of the matter, this Court is of the view that the Trial Court ought to have disposed of the application on the basis of affidavits of assets and liabilities as directed by the Hon'ble Supreme Court in the case of ***Rajnesh Vs. Neha*** reported in ***(2021) 2 SCC 324***. If affidavits of assets and liabilities of both the parties are filed before the learned Trial Judge he can very well distinguished as to whether the means of the petitioner from agriculture, if any, is sufficient considering her liabilities and vice-versa. Therefore, I am in a



position to concur with the impugned judgment passed by the Trial Court. The impugned judgment passed in Maintenance Case No.237 of 2008 on 11.08.2016 by the learned Principal Judge, Family Court, Purnea is quashed and set aside.

5. The learned Trial is directed to consider the affidavits of assets and liabilities of both the parties which the parties should file within four weeks from the date of communication of this order in the Trial Court to decide the question as to whether the petitioner is entitled to get any maintenance or not.

6. Since, the opposite party is not present in Court, the Trial Court is directed to issue notice upon the opposite party for compliance of the order of this Court.

7. The fresh order in Maintenance Case No.237 of 2008 shall be passed within three months from the date of communication of this order.

8. Accordingly, the instant revision stands disposed of.

(Bibek Chaudhuri, J)

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