

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1112 of 2019

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

=====

Rajesh Kumar @ Rajesh Kumar Prasad S/o Viswanath Prasad R/o village-
Dhankhar, Post- Markan, P.S.- Hussainganj, District- Siwan

... .. Petitioner/s

Versus

MANI KUMARI DEVI W/o Rajesh Kumar Prasad R/o village- Dhankhar,
Post- Markan, P.S.- Hussainganj, District- Siwan. At present D/o Rajendra
Prasad, resident of Chapinya Bujurg, P.S.- Hussainganj, District- Siwan

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Shyam Kishore, Advocate Mr. Rishi Sinha, Advocate
For the Respondent/s	:	Mr. Kumar Vijayendra Pratap, Advocate Mr. Pradi Ranjan, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 27-02-2024 Heard learned advocate for the petitioner and learned
Additional Public Prosecutor for the State.

2. The petitioner being the husband of the opposite party has assailed the judgment and order of maintenance passed by the learned Principal Judge, Family Court, Siwan in Maintenance Case No. 124 of 2014 on 15.07.2019 directing him to pay Rs.4,000/- per month towards maintenance to the opposite party.

3. In the instant revision challenge is made mainly on the ground that the petitioner is unemployed, he has no source of income and therefore, it is not possible for him to make payment of such amount of Rs.4,000/-.



4. It is true that during trial of the case, neither of the parties could produce any document with regard to employment of the petitioner. At the same time, it is well established that a married person is under legal and moral obligation to maintain his wife. It is not the actual income of the husband i.e. required to consider, but his ability to income is the main aspect required to be considered by the Trial Court. It is not in dispute that the petitioner is an able bodied person capable to earn.

5. The Hon'ble Supreme Court in the case of *Anju Garg & Anr. Vs. Deepak Kumar Garg* reported in *SCC Online (2022) SC 1314* that the income of the husband shall be determined on the basis of Minimum Wages Act. The similar view was taken by the Allahabad High Court in an unreported decision dated 25.01.2024 in *Kamal Vs. State of U.P. (Cr. Revision No. 461 of 2023)*.

6. Considering the ratio of the above mentioned two judgment, this Court can safely hold petitioner notional income to Rs.12,000/- per month.

7. Considering the fact that daily wage under Minimum Wages Act in the State of Bihar is Rs.400/-.

8. The opposite party is entitled to get 1/3rd of the income of the petitioner. Thus, the Trial Court did not commit



any error in directing the petitioner to pay maintenance at the rate of Rs.4,000/- per month in the above mentioned proceeding.

9. In view of the above finding, I do not find any ground for interference and the instant revision is dismissed on contest.

(Bibek Chaudhuri, J)

mdrashid/-

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

