

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1126 of 2019

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

BIKAS JHA @ BEDESHI JHA @ BIKASH KUMAR JHA, Son of Hira Nand Jha, Resident of Village - Koriyahi, P.S.- Sursand, District - Sitamarhi. At Present Nahar Chowk Sri Nagar, P.S.- Sitamarhi, District - Sitamarhi

... .. Petitioner/s

Versus

1. The State of Bihar
2. Asmita Jha Wife of Bikas Jha @ Bedeshi Jha D/O Ramakant Jha, Resident of Village - Koriyahi, P.S.- Sursand, District - Sitamarhi. At Present Nahar Chowk Sri Nagar, P.S.- Sitamarhi, District - Sitamarhi. Now resides at Village - Bengahi, P.S.- Bairgania, District - Sitamarhi.
3. Virat Kumar Son of Bikas Jha @ Bedeshi Jha Under guardianship of Asmita Jha, Resident of Village - Koriyahi, P.S.- Sursand, District - Sitamarhi. At Present Nahar Chowk Sri Nagar, P.S.- Sitamarhi, District - Sitamarhi. Now resides at Village - Bengahi, P.S.- Bairgania, District - Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar Jha, Advocate
For the State	:	Mr. Pawan Kumar Chaurasia, APP
For the Opp. Party	:	Mr. Dinesh Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 28-02-2024 The instant revision is directed against the order dated 30th May 2019 passed by the learned Principal Judge, Family Court, Sitamarhi in Miscellaneous Case No. 104 of 2015, upon a proceeding under Section 125 of the CrPC. In the instant case, it is not in dispute that the opposite party no. 02 is the legally married wife of the petitioner and the opposite party no. 03 is the minor son of the parties, who has been residing with his mother, the opposite party no. 02 herein. The petitioner claimed maintenance alleging *inter alia* that the opposite party



is a lecturer of a private college and he has a considerable earning, therefore, he is under obligation to maintain the opposite party and their child, as the opposite party does not have any source or means of income. In the instant revision application, the learned advocate did not deny that the opposite party no. 02 is the married wife of the petitioner. It is also not denied that the opposite party no. 02 has been residing separately from the petitioner.

2. Indisputably, the child of the parties are being maintained by the opposite party no. 01. The trial court granted maintenance allowance at the rate of Rs. 5,000/- per month for the maintenance of the minor child of the parties and Rs. 2,000/- per month to the opposite party no. 02 along with the arrears maintenance amounting to Rs. 2,15,000/- in five equal installments. The said order is under challenge in the instant revision.

3. It is submitted by the learned advocate for the petitioner that the opposite party no. 02, during trial of the case, failed to produce any chit or paper to show the income of the petitioner. Therefore, the petitioner's income has not been proved. Moreover, it is submitted by him that the petitioner was a teacher of a private college but he was terminated from the job



after litigation cropped up between the parties. Thirdly, it is submitted by him that the petitioner has been running his livelihood at present by way of private tuition in his village. The income of the petitioner is not such that he could pay Rs. 7,000/- per month towards maintenance.

4. It is not in dispute that the petitioner is an educated person. He was previously a lecturer in a private college and at present, he is rendering private tuition. Though, the opposite party failed to produce any document in support of the income of the petitioner. The petitioner also failed to produce any document to show his income. If a fact is asserted by an oral evidence by a party, and the adversary has a better evidence to controvert the said fact but does not produce such document, adverse presumption shall be drawn against the party who is having the document to prove his income.

5. As the opposite party failed to produce any document in support of his income, I have no other alternative but to accept the version of the opposite party with regard to the income of the petitioner.

6. Considering the amount of maintenance granted by the trial court and the present day needs of the parties, this Court is of the view that the amount of maintenance is not at all



unjust or excessive. However, the learned trial Judge in his order of maintenance has passed a rider that the petitioner is entitled to pay maintenance till the period up to which the opposite party shall remain separately from the petitioner.

7. A final order of maintenance cannot be granted in such a manner, providing certain conditions to the effect that maintenance shall be paid up to the period till the wife and child remain separately from the husband. Therefore, this part of the order is set aside. However, the trial court did not commit any illegality or material irregularity in passing the order of maintenance at the rate of Rs. 5,000/- per month for the child and Rs. 2000/- per month for the wife of the petitioner along with the arrears maintenance.

8. I do not find any ground for interference in the instant revision and accordingly, the instant revision is dismissed.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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