

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1127 of 2019

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

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Agam Kumar Jha, Son of Ramesh Jha Resident of Village - Chainpur, P.S.-
Bangoan, District- Saharsa. Presently House No.-1-B-258 Kaveri City, Loni,
Gaziabad, U.P.-201102

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Mrs. Saraswati Kumari, D/O Chandra Mohan Khan Resident of Village
-Bangoan P.S.- Bangoan, District- Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prafull Chandra Thakur, Advocate Ms. Madhumala Kumari, Advocate Mr.Dinesh Choudhary
For the Respondent/s	:	Mr.Rajiv Nayan

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

2 07-02-2024 1. The instant revision is directed against an order passed by the Principal Judge, Family Court, Saharsa in Miscellaneous Case No. 117 of 2017 on 29th of June, 2019 under Section 125 of the Code of Criminal Procedure, directing the petitioner / husband to pay maintenance allowance at the rate of Rs. 9,000/- per month.

2. It is submitted on behalf of the petitioner / husband that marriage of the parties was solemnized on 29th of April, 2013 according to Hindu rites and customs. After one month of marriage, the Opposite Party No. 2 left her matrimonial home. This fact was admitted by the Opposite Party No. 2 in her plaint



in a suit for divorce filed against her. It is further submitted by the learned Advocate for the petitioner that the petitioner wanted to maintain a happy and peaceful conjugal life, but it was the Opposite Party No. 2, who voluntarily left her matrimonial home. At the time of marriage, the petitioner used to work as a qualified Engineer with B.Tech degree in Delhi. However, he has lost his job during Covid period and at present he is unemployed, residing at his native village. Therefore, he has no source of income and it is not possible for him to pay any maintenance allowance.

3. The learned Advocate for the petitioner submits that he local Gram Panchayat issued a certificate to the effect that the petitioner was unemployed.

4. Having heard the learned Advocate for the petitioner and on careful perusal of the impugned order as well as other materials on record, I find that the certificate issued by the Panchayat was not marked exhibit in the Trial Court. Therefore, the Trial Court rightly did not consider such certificate issued by the local Gram Panchayat. At the same time, it is found from the record that the Opposite Party No. 2 did not file any document to show that the petitioner has been working for gain at present.



5. As there is no document with regard to the income of the petitioner and the Trial Court came to a finding about the notional income of the petitioner on the basis of the oral evidence, this Court is of the view that the issue regarding means of the petitioner can only be adjudicated if the petitioner is directed to file affidavit of assets and liabilities in the Court below.

6. Moreover, it is submitted by the learned Advocate for the petitioner that the Opposite Party No. 2 has got a government service in the meantime and she has sufficient means to maintain herself. Therefore, the Opposite Party No. 2 is also directed to file affidavit of assets and liabilities in the Court below within one month from the date of communication of this order. On the basis of affidavits of assets and liabilities, filed by both the parties within one month from the date of this order, the learned Trial Judge reconsider the amount of maintenance which is required to be paid to the Opposite Party No. 2 in the aforesaid proceeding under Section 125 of the Cr.P.C.

6. For the reasons stated above, the instant revision is allowed.

7. The impugned order passed by the Principal Judge,



Family Court, Saharsa on 29th of June, 2019 in Miscellaneous Case No. 117 of 2017 is quashed and set aside.

8. The learned Trial Judge is directed to dispose of the case on the basis of affidavits of assets and liabilities within three months from the date of this order.

9. In the meantime, the petitioner is directed, without prejudice to the rights and contentions of both the parties, to pay an amount of Rs. 4,000/- per month to the Opposite Party No. 2.

10. The instant revision is accordingly allowed.

(Bibek Chaudhuri, J)

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