

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.21 of 2022

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

SATYENDRA SHARMA S/o Premilal Sharma Ward No.11, Pakdiya, Post Pakdiya, P.S.- Chhauradana, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Pinki Devi W/o Satendra Sharma, D/o Rameshwar Thakur R/o Neemuhaiya, P.S. - Ghorashan, Distt. - West Champaran at present Mohalla - Nakdev Tola 100 metre South of Chandimai Mandir, Thana - Iboini, Distt. - West Champaran

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vikas Mohan, Advocate

For the Respondent/s : Dr. Ajeet Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 03-04-2024 Heard learned advocate for the petitioner and learned Additional Public Prosecutor for the State.

2. The instant revision is directed against an order dated 03.12.2021 passed in Maintenance Case No.220 of 2018 passed by the learned Principal Judge, Family Court, East Champaran, Motihari directing the petitioner to pay maintenance at the rate of Rs.5,000/- per month to the opposite party no.2 and Rs.1,000/- each per month to four children of the parties, total being Rs.9,000/- per month as monthly maintenance allowance.

3. The said order is under challenge before this Court on the following grounds:

(a) The petitioner/husband never refused or neglected



the opposite party no.2 and her children to maintain. On the other hand, the opposite party no.2 voluntarily left her matrimonial home with the children of the parties and she is not willing to stay with the petitioner and lead happy and peaceful conjugal life.

(b) The Trial Court failed to consider monthly income of the petitioner. The petitioner works in a private company and he earns Rs.7500/- per month. Therefore, the petitioner does not have the financial capacity to pay Rs.9,000/- per month to the opposite party no.2.

(c) The learned Principal Judge passed the order of maintenance against the petitioner on the basis of surmise and conjecture taking into consideration the husband's responsibility to maintain his wife and children.

4. It is submitted by the learned advocate for the petitioner that the paternal home of the opposite party no.2 is in Gujrat. Marriage of the petitioner was solemnized with the opposite party no.2 on 06.05.2003. In the said wedlock, the opposite party no.2 gave birth to three girl children and one boy child.

5. It is the case of the petitioner before the Trial Court that the opposite party no.2 went to her paternal home on 05.05.2016 in Gujrat. On 15.06.2016 the petitioner went to the paternal home of the opposite party no.2 to bring his wife and children back to his house. However, the opposite party no.2 refused to returned her matrimonial home. On the contrary, the



petitioner was abused by the opposite party no.2. Finally, the opposite party no.2 was brought to her matrimonial home on 06.02.2017. On 10.02.2017 the opposite party no.2 went away from her matrimonial home to her paternal home. She was again brought by the petitioner on 16.02.2018 but on 20.03.2018 the father of the opposite party no.2 took her away to his house along with her children. Therefore, it is the case of the petitioner that the petitioner tried his level best to stay with the opposite party no.2 but the opposite party no.2 voluntarily refused and neglected the petitioner and did not want to stay with him as husband and wife.

6. It is contended by the learned advocate for the petitioner that Sub Section (4) of Section 125 of the Cr.P.C. clearly states that no wife shall be entitled to received an allowance for maintenance from her husband, if without any sufficient reason, she refuses to leave with her husband. The opposite party no.2 refused to stay with her husband and therefore, she is not entitled to get any maintenance.

7. It is the case of the opposite party no.2, on the other hand, that she was subjected to physical and mental torture at her matrimonial home, she lead her conjugal life from 2013 to 2017 with her husband. Subsequently, she was driven away



from her matrimonial home so she has been staying at her paternal home, she has no source of income and is completely dependent upon her parents, therefore, she is entitled to get maintenance.

8. Learned advocate for the petitioner also submits that the petitioner's gross salary is Rs.10229/-, his net salary is Rs.7670/-. Therefore, he does not have the financial capability to pay Rs.9000/- per month to the opposite party no.2.

9. In the Trial Court, the petitioner contended that he earns Rs.7000/- per month. It is recorded by the learned Principal Judge that he directed both the parties to file affidavits of asset and liability and several orders were passed directing the parties to file such affidavits but none of the parties filed such affidavit before him. Therefore, he assist notional income of the opposite parties and passed the order of maintenance.

10. In the instant proceeding, the petitioner has filed a pay slip for the month of January, 2018. It is found from the pay slip that he used to earns Rs.6753/- per month as salary from Gayatri Shakti Paper & Board Ltd., Unit-2, Sarigam, Gujrat. It is important to note that the petitioner has not filed the current salary slip, it is presumed that his salary has been increased during the last six years. Had the petitioner filed the salary slip



of the year 2024 his present salary could have been asserted the petitioner purposefully withheld the salary slip. Therefore, this Court has no other alternative but to hold that the petitioner has purposefully withheld the best evidence with regard to his income and under such circumstances and adverse presumption may be drawn against the petitioner with regard to his income.

11. It is submitted by the learned advocate for the petitioner that the petitioner has lost its job during Covid Pandemic but no such pleading has been made by the petitioner.

12. For the reasons stated above, I do not find any illegality or material irregularity in the impugned order, accordingly, the instant revision is liable to be dismissed.

13. The petitioner is however, given liberty to file appropriate application under Section 127 of the Cr.P.C. for alteration of maintenance allowance in the Trial Court, if he had lost its job during Covid Pandemic and at present he is unemployed.

(Bibek Chaudhuri, J)

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