

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No 1208 of 2019

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

Phultara Khatoon @ Phultara Wife of Shekh Tabrej, D/o Shekh Bhikhri
Resident of Village - Janerawa, P.S.- Banjariya, Distt - East Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Shekh Tarbarej Son of Jafirul Resident of Village - Mohamadpur, P.S.-
Banjariya, Distt - East Champaran, Motihari.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rajesh Kumar

For the Respondent/s : Mr.Madhura Nand Jha

CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

ORAL JUDGMENT

Date : 27-09-2024

This revision petition has been preferred by the petitioner being aggrieved with the order dated 27.02.2019 passed by the learned Principal Judge, Family Court, East Champaran, Motihari in Maintenance Case No 107 of 2014 whereby and where under the learned Family Court dismissed the application submitted by the petitioner under Section 125 of the Cr P C on the ground that opposite party No 2 – husband has already divorced her and also in view of the fact that the petitioner-wife has received Rs 30,000/- as one time settlement.

2 I have heard learned counsel for the petitioner - wife as well as the learned counsel for opposite party No 2 – husband.



Perused the evidence adduced by both the parties before the learned Family Court.

3 Undisputedly, the petitioner is the legally wedded wife of opposite party No 2. It is also not in dispute that as of now, opposite party No 2 has remarried with another lady.

4 Before the learned Family Court, opposite party No 2 has produced the documents which have been exhibited as Exhibit A (judgment passed by the trial Court in Complaint Case No 1217 of 2010), Exhibit B (compromise deed executed by both the parties which was submitted by the parties during proceeding of the said complaint case) and document E/1, the statement of the petitioner recorded in the said complaint case.

5 Perusal of the above mentioned document (Exhibit A) shows that the said complaint case has not been disposed of on the basis of compromise which has taken place between both the parties rather accused were acquitted for the reason that offences have not been proved beyond reasonable doubt. Exhibit D only shows that Rs 30,000/- has been received by the petitioner – wife from her counsel. However, during her cross-examination, the petitioner – wife categorically stated that she has not taken any money from her husband. She further categorically stated that some money was given to her by her husband – opposite party No



2 but subsequently it was returned back to her husband. In the document (Exhibit B), there is no mention of the fact that petitioner-wife is taking any money in lieu of full time settlement with opposite party No 2 – husband. In her Court statement also, the petitioner – wife has not admitted this fact. Therefore, the finding recorded by the learned Family Court that the petitioner – wife has settled her matter, one time fully and finally, is not in accordance with the evidence available on record. Therefore, the ground of rejection of the application under Section 125 of the Cr P C by the petitioner – wife is not sustainable.

6 On the evidence available on record, it is well established that the petitioner is the legally wedded wife of opposite party No 2. At present, opposite party No 2 has performed the second marriage. Therefore, the petitioner – wife has sufficient cause to reside separately from opposite party No 2 – husband. Further, it is the case of opposite party No 2 – husband that he divorced the petitioner – wife. If so, there is no evidence available on record that the petitioner – wife has performed her second marriage. Since she is the divorced wife, as pleaded by her husband, therefore, she is also entitled to maintenance till she marries with another man.



7 So far as the quantum of maintenance is concerned, considering the financial and social status of both the parties and further considering the income of opposite party No 2 – husband and his other liabilities, i e, second wife, I am of the view that Rs 3,000/- (Rupees Three Thousand) per month would be just and proper maintenance in favour of the petitioner – wife.

8 Accordingly, this revision petition is allowed. The impugned order dated 27.02.2019 is set aside.

9 Opposite party No 2 – husband is directed to pay Rs 3,000/- (Rupees Three Thousand) to the petitioner – wife from the date of submission of application under Section 125 of the Cr P C before the learned Family Court.

10 Considering the fact that opposite party No 2 has to give the maintenance from the year of 2014, liberty is granted to him to make the entire arrears of the maintenance in four equal installments in gap of three months.

11 With the observation and direction, this revision petition is allowed.

(Arvind Singh Chandel , J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.10.2024
Transmission Date	04.10.2024

