

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1257 of 2019

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

AKHILESH KUMAR SINGH Son of Late Lalbabu Singh @ Anand Narayan
Singh Resident of Village - Koini, P.S.- Manjhagarh, District- Gopalganj

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Rimjhim Singh Wife of Akhilesh Kumar Singh, D/O - Jaleshwar Rai
Resident of Village - Narahawan Kinwari Tola, P.S.- Gopalpur, District-
Gopalganj

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dhananjay Kumar Tiwary
For the Respondent/s	:	Mr. Kumar Veerendra Narayan

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 24-01-2024 The instant Revision is directed against an order dated 2nd August, 2019 passed by the learned Principal Judge, Family Court, Gopalganj in Misc. (Maintenance Case No. 1 of 2014) under Section 127 of the Code of Criminal Procedure.

2. By passing the impugned order, the learned Judge dismissed the application under Section 127 of the Code of Criminal Procedure.

3. It is the case of the petitioner/ husband before this court that in the year 2007, competent Civil Court granted a decree for judicial separation on the ground on desertion. The opposite party no.2 has been staying elsewhere on her own will and volition she deserted her husband, therefore, the petitioner



is not entitled to get any maintenance from her husband. Secondly, it is submitted by the learned Advocate for the petitioner that the petitioner and the opposite party has already filed a joint application under Section 13(b) of the Hindu Marriage Act praying for a decree of divorce on mutual consent.

4. In view of such circumstances, since the opposite party voluntarily left her husband and refuge and neglected to maintain conjugal life with her, she is not entitled to get any maintenance. The learned Principal Judge rejected the contention made by the petitioner and dismissed his application under Section 127 of the Code of Criminal Procedure. Only issue involved in the instant Revision is as to whether a married woman against whom a decree for judicial separation has been passed and who has subsequently filed an application for divorce on mutual consent is entitled to get maintenance or not. It is needless to say that the Section 125 of the Cr.P.C. provides monetary relief to the wife, legitimate or illegitimate child and father and mother of a person who are unable to maintain himself or herself. The provision was incorporated in the court to protect the destitute ladies, legitimate or illegitimate children and parents from vagrancy who are unable to maintain themselves. The provision trusts a statutory duty upon the



husband/father/son, as the case may read to provide maintenance for their sustenance.

5. It is not disputed by the learned Advocate for the petitioner that the opposite party no.2 was a legally married wife of the petitioner. A decree for judicial separation has been passed against her, both the petitioner and the opposite party filed a joint application for mutual divorce.

6. The explanation to Section 125(1)(b) defines wife in the following words :-

(a) “wife includes a woman who has been divorced by or has obtained a divorce from her husband and has not remarried.

7. It is material as to whether the decree for divorce was passed on mutual consent or on the ground of desertion. What is material under the Statute is to see as to whether in case of a divorced wife, she is unable to maintain herself, and secondly, she has remarried or not. There is no allegation by the petitioner that the opposite party no.2 has remarried. Secondly, being a divorced wife even on the ground of desertion, she is entitled to maintenance under the provision of Section 125 of the Cr.P.C, if she is unable to maintain herself. No case is made



out by the opposite party that the opposite party no.2 is able to maintain herself.

8. In view of what has been stated above and on perusal of the impugned order, I do not find any merit in the instant Revision, and accordingly, the same is dismissed.

(Bibek Chaudhuri, J)

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