

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1326 of 2019

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

Sukdeo Thakur @ Sudeo Thakur Son of Upendra Thakur, Resident of Village - Bhargama Paikpara, P.S.- Bhargama, District-Araria.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Soni Devi W/o Sukdeo Thakur @ Sudeo Thakur D/O Bimal Thakur, Resident of Village - Bhargama Paikpara, P.S.- Bhargama, Distt.- Araria. At Presnt Resident of Village - Sonapur Bazar, P.O.- Sonapur, P.S.- Narpatganj (Bathnaha O.P.), Distt.- Araria.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mrigendra Kumar, Advocate
		Ms. Kusum Kumari, Advocate
For the Respondent/s	:	Mr. Ramchandra Sahni, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 02-02-2024 Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

2. Having heard the learned advocate for the petitioner on the point of admission, this Court is of the view that the instant revision can be disposed of even without service of notice and for this reason the interest of the opposite party no.2 will not hamper.

3. The instant revision is directed against an order passed in Maintenance Case No. 128 of 2013 by the learned Principal Judge, Family Court, Araria on 06.08.2019 directing the petitioner to pay maintenance at the rate of Rs.7,000/- per month in favour of the opposite party no.2 from the date of the



order. The aforesaid order is under challenge at the instance of the petitioner/husband.

4. In course of argument, the learned advocate for the petitioner does not dispute that the petitioner is the legally married wife and she has been residing at her paternal home. From the impugned order it is found that the marriage between the parties was solemnized on 23.05.2011, for few months they were happy but subsequently, the petitioner and his family members started torturing her both physically and mentally on demand of dowry. Failing to bear such torture the opposite party no.2/wife left her matrimonial home and took shelter at her paternal home. It is also not argued that the opposite party no.2 has her own source of income with which she can maintain herself.

5. Only point that has been raised by the learned advocate for the petitioner that the learned Trial Judge fixed the maintenance amount at the rate of Rs.7,000/- per month without considering the case of the petitioner that he is a day labourer and earns Rs.250/- per day. The said fact was corroborated by the witness on behalf of the opposite party no.2.

6. On the other hand, it is the case of opposite party no.2 that the petitioner has a shop of Gold and Silver Jewellery, a



shop of grinding wheats and also agricultural land, he earns Rs.1,50,000-2,00,000/- per month. The opposite party no.2 has failed to produce any document in support of the shop and grinding machine of the petitioner. This could have been easily proved by procuring the copy of the Trade License, Shop License and other relevant documents including the certificate of the local Panchayat but the opposite party no.2 did not take any attempt to produce such evidence in the Court below. When there is a discrepancy between the evidence of the parties relating to the income of the petitioner and the petitioner has urged that he is the day labourer, the Trial Court could have taken relied on the observation made by the Hon'ble Supreme Court in the case of *Anju Garg Vs. Deepak Kumar Garg* reported in **2022 SCC Online 1314**.

7. In the case of *Kamal Vs. State of U.P. & Ors.* (Criminal Revision No.461 of 2023 decided on 25.01.2024), a co-ordinate Bench of Allahabad High Court decided that when there is no proof of income filed by either of the parties and it is claimed by the opposite party that he is a day labourer, his notional income should be held to be on the basis of Minimum Wages Act. Thus, applying the minimum wages prevailing in the State of Bihar, it is presumed that the petitioner is capable of



earning Rs.400/- per day, which means his monthly salary to be a Rs.12,000/- per month. The opposite party no.2 is entitled to get 1/3rd of the maintenance allowance. Thus, the opposite party no.2 is entitled to get Rs.4,000/- per month.

8. In view of what has been stated above, the instant revision is disposed of directing the petitioner to pay Rs.4,000/- per month to the opposite party no.2 from the date of passing of the Lower Courts order i.e. from 06.08.2019. The order of the revisional application is modified to the above extent.

9. Accordingly, the instant revision is disposed of.

(Bibek Chaudhuri, J)

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