

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.748 of 2018

Arising Out of PS. Case No.- Year-1111 Thana- District-

Shakil Akhtar Son of Masirudin, resident of Village- Darhiya, P.O.-
Meharganj, P.S.- Bahadurganj, District- Kishanganj.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Shama Parween, Wife of Shakil Akhtar, Daughter of Md. Sultan, resident of
Village- Darniya, P.O.- Mehrajganj, P.S.- Bahadurganj, District- Kishanganj.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar Mishra, Advocate Ms. Manini Jaiswal, Advocate Ms. Komal, Advocate
For the Complainant	:	Mr. Ram Pravesh Kumar, Advocate
For the State	:	Mr. Anand Mohan Prasad Mehta, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

8 16-02-2024 An ex parte order of maintenance is passed on 19th

July, 2017 or Principal Judge, Family Court, Kishanganj in
Maintenance Case No. 211/2014 directing the petitioner to pay
maintenance at the rate of Rs. 5,000/- per month to his
wife/opposite party no.2 herein and Rs. 3,000/- per month each
to the five children of the parties, until they attained majority, is
assailed in the instant Revision.

2. Indisputably, marriage between the parties was
solemnized according to Hindu Rights and Ceremonies. In the
year 2018, they continued their happy conjugal life till 2014,
and during the said period, 5 children were born in the wedlock



between the petitioner and the opposite party no.2. Subsequently, dispute started between them. The opposite party no.2 filed a complaint under Section 498A of the Indian Penal Code against the petitioner and other relations of her matrimonial home. Subsequently, the opposite party no.2 filed an application under Section 125 of the Cr.P.C which was registered as Maintenance Case No. 211/2014.

3. It is found from the impugner order that the notice of the said proceeding was served on several times to the petitioner. When the opposite party failed to appear in pursuance to service of notice, it was published in the daily newspaper. In spite of such service of notice, the opposite party no.2 did not appear. Therefore, the trial court proceeded with ex parte hearing of the case and passed the impugned order.

4. It is submitted by the learned Advocate for the petitioner that the petitioner has been going on paying the interim maintenance at the rate of Rs. 5,000/- per month to the opposite party no.2 and the learned Advocate for the opposite party no.2 has acknowledged receipt of such amount per month from the petitioner.

5. However, it is submitted by the learned Advocate for the petitioner that the opposite party, in course of her



evidence, failed to produce any cheat of paper in support of the income of the petitioner.

6. The learned Advocate for the opposite party on the other hand submits that her husband works as a civil contractor in Delhi, Kishanganj and other places. He constructs big houses and earns huge amount of money. Moreover, he is the owner of 6 acres of agricultural land, from which, he has substantial income. Therefore, the petitioner is financially sound to pay Rs. 20,000/- per month to the opposite party no.2.

7. It is needless to say that being a father, the petitioner has legal and moral responsibility to maintain his children. He gave birth to 5 children.

8. In the instant Revision, there is no pleading that the opposite party no.2 has any source of income. Therefore, it is the bound and duty of the petitioner to maintain his children.

9. At the same time, I am not unmindful to note that the opposite party failed to produce any document showing income of the petitioner.

10. Under such circumstances, this court is of the view that both the parties should be directed to file affidavits of assets and liabilities in the court below as per the guideline of the Hon'ble Supreme Court in the case of ***Rajnesh vs. Neha***



reported in *(2021) 2 SCC 324*.

11. Such assets and liabilities shall be filed as per the proforma prepared by the Hon'ble Supreme Court in the said judgment within one month from the date of communication of this order.

12. The trial court shall then pass the quantum of maintenance on the basis of affidavits of assets and liabilities of the parties within one month from the date of filing of such affidavits of assets and liabilities by both the parties.

13. Without prejudice to the rights and contentions of the parties, the petitioner is directed to pay/deposit a sum of Rs. 10,000/- per month in favour of the opposite party till disposal of Maintenance Case No. 211/2014 as per direction made hereinabove.

14. The impugner order, so far as it relates to quantum of maintenance is accordingly, quashed and set aside. The instant Revision is allowed as per the observation and direction given hereinabove.

(Bibek Chaudhuri, J)

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