

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.813 of 2023

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

Pinki Devi W/O Sonu Thakur R/O Village- Panapur Langa, P.S- Hajipur Sadar, Distt.- Vaishali Presently Residing At D/O Rajeshwar Singh Of Village Gumti P.S- Raja Pakar (O.P Baranti) , Distt.- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sonu Thakur S/O Sheo Shankar Thakur R/O Village- Panapur Langa, P.O- Panapur Langa, P.S- Hajipur Sadar, Distt.- Vaishali.
3. Priya Ranjan @ Chunu S/O Ram Naresh Chaudhary R/O Village- Nilo Rukundpur P.O. Dauhah Tiriauta, Distt.- Vaishali.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Awadhesh Kumar Singh
For the Respondent/s : Mr.Satya Nand Shukla

CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

ORAL JUDGMENT

Date : 26-11-2024

This revision petition has been preferred by the petitioner being aggrieved with the order dated 12.09.2023 passed by the learned Principal Judge, Family Court, Vaishali at Hajipur in Maintenance Case No 6 of 2017 whereby and where under the learned Principal Judge, Family Court rejected the application of the petitioner filed under Section 125 of the Cr P C on the ground that she is not entitled to get maintenance as she has already got her second marriage solemnized with another person.



2 Undisputedly, the marriage of the petitioner with Opposite Party No 2 was solemnized on 04.06.2009 as per Hindu rites and customs. Thereafter, she went to her matrimonial house. It is also not in dispute that from the wedlock of the petitioner and Opposite Party No 2, two children were born.

3 The petitioner-wife filed an application under Section 125 of the Cr P C before the Family Court on the ground that she was ousted from her in-laws' house on 14.06.2015 and since then she is living with her father and is unable to maintain herself and Opposite Party No 2 has sufficient means to maintain the petitioner but he is not maintaining her. In his written statement, Opposite Party No 2 has stated that the petitioner herself has left the house and from 12.06.2015, she is residing separately on her own will. She is working as a maid in a private school and is earning Rs 5,000/- per month. As she is residing separately without any reasonable cause, she is not entitled to get any maintenance.

4 The learned Family Court, after recording the evidence of both the parties and after hearing the parties, rejected the claim of the petitioner on ground that as of now as she got her second marriage solemnized with another person, therefore, she is not



entitled to get any maintenance from her husband, i e, Opposite Party No 2.

5 Learned counsel for the petitioner would submit that without any pleading and without any cogent and reliable evidence, the learned Family Court wrongly arrived at the conclusion that the petitioner has got her second marriage solemnized with one Chunnu Chaudhary and wrongly rejected the application of the petitioner for grant of maintenance. Therefore, according to the counsel on this ground only, the impugned order is liable to be set aside.

6 Learned counsel for Opposite Party No 2 opposes the argument advanced by the learned counsel for the petitioner.

7 Heard both the counsel, perused the entire record of the Court and also gone through the evidence adduced by both the parties before the learned Family Court.

8 Undisputedly, in his written statement, Opposite Party No 2 has not pleaded anything with regard to second marriage solemnized by the petitioner with one Chunnu Chaudhary. The learned Family Court, only on the basis of Exhibit 1 issued by Witness No 4 of Opposite Party No 2 (husband) and also on the basis of one enquiry report dated 19.06.2023 submitted by the ASI,



PS – Patepur arrived on the conclusion that the petitioner herein got her second marriage with one Chunnu Chaudhary.

9 Perusal of the deposition of Witness No 4 of Opposite Party No 2 (husband), namely, Dhaneshwar Sahni, it transpires that in his Court statement, he has not deposed anything that the petitioner herein got her second marriage solemnized with Chunnu Chaudhary rather he stated that on being enquired from some villagers, it was found by him that the petitioner herein got her second marriage solemnized with Chunnu Chaudhary. However, in paragraph – 14 of his cross-examination, he has admitted the fact that he has not seen the said alleged marriage of the petitioner with Chunnu Chaudhary and he also admitted the fact that he issued the certificate (Exhibit 1) only on the instance of one Kalu Chaudhary.

10 The order sheet of the concerned maintenance case further shows that on the basis of the document, i e, Exhibit 1 dated 21.02.2021, the learned Family Court directed the concerned SHO of PS – Patepur to enquire the matter regarding the second marriage of the petitioner-wife. Thus, it is clear that the learned Family Court itself collected the evidence which is not expected from the trial Court. It was the burden of Opposite Party No 2 – husband to establish that fact but the learned Family Court itself



collected the said evidence. The enquiry report of the concerned ASI dated 19.06.2023 also shows that in the enquiry report, it is not mentioned that the petitioner herein has got her second marriage solemnized with Chunnu Chaudhary rather it is mentioned that both were residing together for a period in the same house but in what capacity they have resided, it is not mentioned in the report. The copy of the said report dated 19.06.2023 has not been given to the petitioner-herein nor she was given any opportunity to rebut the same.

11 Opposite Party No 2 – husband himself was unable to establish the fact that the petitioner herein got her second marriage with one Chunnu Chaudhary. The finding of the learned Family Court is based upon the document (Exhibit 1) and the enquiry report dated 19.06.2023 is not acceptable.

12 Accordingly, the impugned order dated 12.09.2023 passed by the learned Principal Judge, Family Court is set aside.

13 The matter is remitted back to the concerned Family Court for passing of fresh order.

14 Both the parties are directed to remain present before the learned Principal Judge, Family Court on 22.01.2025.

15 The learned Principal Judge, Family Court is directed to allow both the parties to adduce evidence with regard to the



alleged second marriage solemnized by the petitioner herein and after giving reasonable opportunity to both the parties for adducing evidence, the learned Principal Judge, Family Court shall pass fresh order in accordance with the relevant rules and laws.

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

(Arvind Singh Chandel, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.11.2024
Transmission Date	28.11.2024

