

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1466 of 2019

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

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PRADEEP KUMAR SRIVASTAVA S/o Shree Surendra Prasad @ Surendra Prasad Srivastava Resident of M.H. Nagar, Near- Pani Tanki, Babunia Road, P.S.- Town Siwan, P.O. and District- Siwan

... .. Petitioner/s

Versus

1. SHILPI SRIVASTAVA Bihar
2. Shilpi Srivastava W/o Pradeep Srivastava Resident of Babunia Road, Near- Pani Tanki, P.S.- Town Siwan, P.O. and District- Siwan. At present D/o Anil Kumar Srivastava, Resident of Faridpur, P.O.- Faridpur, P.S.- Hussainganj, District- Siwan

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ravi Bhushan Verma
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 09-02-2024 Only dispute in the instant Revision in which an order dated 24.06.2019 in Maintenance Case No. 128 of 2013 passed by the learned Principal Judge, Family Court, Siwan is assailed with regard to the income and financial capacity of the party which is one of the determining factors of fixation of amount of maintenance allowance.

2. It is contended on behalf of the opposite party no.2 who was the petitioner in the above mentioned proceeding under Section 125 of the Code of Criminal Procedure that the present petitioner/husband has a factory at Ghaziabad, Uttar Pradesh or works in a factory at Ghaziabad and he earns Rs.



30,000/- per month from the said factories. It is also stated by the opposite party no.2 in her petition under Section 125 of the Cr.P.C., that the present petitioner/husband has some landed property and from agriculture, he earns Rs. 2 lakh per annum.

3. The petitioner herein has denied the said application made by the opposite party no.2. It is the specific case of the petitioner that at the time of marriage, he used to work in a factory at Ghaziabad but he has been terminated. He also works as a day labourer in Siwan and resides in a rented premises. He does not have any financial capacity to maintain his wife and their son. It is needless to say that if the wife is unable to maintain herself and her husband without any sufficient cause declines to maintain his wife, the court shall have the right to pass order of maintenance. It is the legal and moral duty of the husband to maintain his wife. Any defence in this regard to the effect that he does not have sufficient means to maintain his wife, shall not be considered by the court. Moreover, in the wedlock between the petitioner and the opposite party, a child was born. It is the duty of the father to maintain the child.

4. At the same time, I am unmindful to note that neither of the parties was able to file any document in support of



their respective income, assets and liabilities. The petitioner contended before the trial court that his wife is a Manager of a Gramin Bank. In another place, it is stated by the petitioner that she is an employee of a Gramin Bank and she has sufficient means to maintain herself and her child.

5. Big at as it may, in spite of contradictory pleadings, neither of the parties could file any document with regard to the income and liabilities of the advisory.

6. For the reasons stated above, both the parties are directed to file affidavits of assets and liabilities in the court below in the manner as laid down by the Hon'ble Supreme Court in the case of *Rajnesh vs. Neha* reported in **2021 (1) SCC 324**.

7. The parties shall file such affidavits of assets and liabilities within one month from the date of communication of this order. The trial court on the basis of such assets and liabilities, determine the quantum of maintenance payable by the petitioner to the opposite party no.2/wife.

8. Under such circumstances, the order of maintenance granted in favour of the opposite party no.2 be kept in abeyance till fresh disposal of the said issue regarding quantum of maintenance payable by the petitioner to his wife.



However, the order directing the petitioner to pay maintenance for his child at the rate of Rs. 2,000/- per month is affirmed. The instant Revision is thus, disposed of according to the above direction.

9. Let a copy of this order be sent to the trial court for compliance. After receiving the order, trial court shall issue notice upon the parties and direct them to file affidavits of assets and liabilities within one month from the appearance of the parties.

10. The learned trial Judge is further directed to dispose of the case on the basis of assets and liabilities within one month thereafter.

11. Accordingly, the instant Revision is thus disposed of.

(Bibek Chaudhuri, J)

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