

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1418 of 2018

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

=====

Md. Kaunain Ali, Son of Halim Mian, resident of Village- Batrauliya, P.S.-
Paharpur, District- East Champaran.

... .. Petitioner/s

Versus

1. State of Bihar
2. Kalma Khatoon, wife of Md. Konain Ali Daughter of Meruddin, resident of
Village- Sukant Banjariya Pipra, P.S.- Banjariya District East Champaran.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Vijay Shankar Shrivastava
For the Respondent/s	:	Mr Parmeshwar Mehta
For Opposite Party No. 2 :		Mr. Abhishek Kumar, Mr. Hemant Ray Ms. Rashmi Jha Mr. Sharad Kumar Verma

=====

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

- 6 19-03-2024 1. The instant revision is directed against an order,

dated 27th of August, 2018, in Maintenance Case No. 158 of

2013, under Section 125 of the Cr.P.C., passed by the Principal

Judge, Family Court, East Champaran, Motihari.
2. The learned Trial Judge after full hearing and

taking evidences of both the parties, directed the present

petitioner to pay maintenance at the rate of Rs. 5,000/- per

month to the Opposite Party / wife from the date of the order,



i.e., 27th of August, 2018.

3. It is submitted by the learned Advocate for the petitioner that the petitioner (Opposite Party No. 2 herein) in course of hearing of the aforesaid proceeding under Section 125 of the Cr.P.C. examined four witnesses. Amongst them, P.W. 1 is the father of the petitioner / Opposite Party No. 2, P.W. 2 is her mother, P.W. 3 is her brother and P.W. 4 the petitioner herself. Thus, the petitioner does not examine any independent witnesses to prove that she was refused and neglected to be maintained by her husband.

4. It is submitted by the learned Advocate for the petitioner that in the Trial Court he filed a show-cause, stating certain facts which has not been considered by the learned Trial Judge. The petitioner earns very meagre amount of money by way of private tuition in a village. Moreover, the Opposite Party No. 2 willfully and voluntarily left her matrimonial home, because she had illicit relationship with one Nesar at her paternal home. Therefore, the Opposite Party No. 2 did not want to stay with the petitioner. Lastly, it is contended by the learned Advocate for the petitioner that without ascertaining the source of income of the petitioner, the Trial Court whimsically granted Rs. 5,000/- per month towards maintenance, which is absolutely



disproportionate to the income of the petitioner.

5. The learned Advocate for the Opposite Party No. 2, on the other hand, submits that the petitioner has alleged that she is having illicit relationship with another person. But in the last paragraph of the show-cause, he himself stated that he will keep his wife with full dignity and honour at her matrimonial home if she come to maintain happy conjugal life.

6. According to the learned Advocate for the Opposite Party No. 2, these two alternative defences of the petitioner is absolutely contradictory in nature. Once it is alleged that the Opposite Party No. 2 has illicit relationship with another person, then how comes the question of accepting such wife who is having illicit relation to another person at her matrimonial home with proper dignity and honour.

7. Having heard the learned counsels for the parties and on perusal of the entire material on records, this Court is of the view that when the husband made an allegation of illicit relationship against his wife, the wife can very well refused to stay with her husband. It is learnt from the submission made by the Bar that the Opposite Party No. 2 having a child, who is suffering from cancer. It is not disputed also that the petitioner is an educated person. He has the capability to earn.



8. It is held in the plethora of judgements by the Hon'ble Supreme Court as well as different High Courts that even if the husband does not have any income, he is bound to maintain his wife.

9. In the instant case, I have already stated that the petitioner is an educated person, capable of earning.

10. In *Anju Garg Vs. Deepak Kumar Garg*, reported in **2022 SCC OnLine SC 1314**, the Hon'ble Supreme Court held that where there is no record to ascertain the income of the petitioner, the Court is free to ascertain the income on the basis of Minimum Wages Act. The said principle has been followed by the Allahabad High Court in Criminal Revision No. 461 of 2023 (Kamaul Vs. Stae of UP & Anr.), decided on 25th of January, 2024.

11. According to Minimum Wages Act, the income of the petitioner is safely held to be Rs. 12,000/- per month. The Trial Court granted Rs. 5,000/- as maintenance of Opposite Party No. 2 from the date of the order.

12. I do not find any illegality or irregularity in the order or amount of maintenance granted to the Opposite Party No. 2, especially considering the fact that the parties have a minor child who is suffering from cancer.



13. The instant revision is, therefore, being devoid of
any merit is dismissed on contest.

(Bibek Chaudhuri, J)

skm/-

U			
---	--	--	--

