

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No 1506 of 2019

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

=====

Md Shamser @ Md Shamsher Mansoori Son of Late Habibullah Resident of Village - Asthana, P.S.- Shakhopur Sarai, District - Sheikhpura.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Kahkasha Parveen Mansoori Wife of Md. Shamsher @ Md. Shamsher Mansoori Resident of Village - Asthana, P.S.- Shekhopur Sarai, District - Sheikhpura.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Binay Kumar
For the Respondent/s	:	Mr.Md. Aslam Ansari

=====

CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

ORAL JUDGMENT

Date : 05-09-2024

Heard

2 This revision petition has been preferred by the petitioner being aggrieved with the judgment dated 14.11.2019 passed by the learned Principal Judge, Family Court, Sheikhpura in Maintenance Case No 36M of 2018 whereby and whereunder the learned Family Court allowed the application filed under Section 125 of the Cr P C by opposite party No 2 and directed the petitioner to pay a monthly maintenance of Rs 8,000/- to opposite party No 2 and Rs 2,000/- to her minor daughter from the date of filing of the application.



3 It is submitted by the learned counsel for the petitioner that before the learned Family Court, the petitioner denied the marriage with opposite party No 2 and also contended that opposite party No 2 was married with one Jabir Hussain and without getting divorce from Jabir Hussain, if any marriage performed by her with the petitioner, is illegal marriage. Therefore, on this ground only, she is not entitled to get any maintenance from the petitioner. Learned counsel for the petitioner submits that there is also no evidence available on record which shows that both the petitioner as well as opposite party No 2 have resided jointly as husband and wife and also there is no evidence available on record which shows that Al Shifa Daniya is the legitimate/illegitimate child of the petitioner. Therefore, she is also not entitled to get any maintenance. Thus, according to the learned counsel, the impugned order passed by the learned Family Court is liable to be set aside.

4 Learned counsel for opposite party No 2 opposes the above argument raised by the learned counsel for the petitioner and submits that there is sufficient evidence available on record which shows that opposite party No 2 is the legally wedded wife of the petitioner. Thus, according to the learned counsel for



opposite party No 2, the learned Family Court rightly directed the petitioner to make payment of maintenance to opposite party No 2.

5 I have heard both the counsel and perused the impugned order as well as record of the learned Family Court. Also gone through the evidence adduced by both the parties before the learned Family Court.

6 In paragraph 8 of her cross examination, opposite party No 2 categorically admitted the fact that she got married with one Jabir Hussain and out of their wedlock, two sons were also born and they are aged 17 and 15 years respectively. In paragraph 9 of the cross examination, she further deposed that her youngest daughter, i e, Al Shifa Daniya is aged about 13 years and according to opposite party No 2, she filed the maintenance case six months prior. In paragraph 10 of her cross examination, she further admitted that in the year 2006 when she got married with the petitioner herein, at that time, she was unaware of the whereabouts of her first husband Jabir Hussain. There is no evidence available on record which shows that opposite party No 2 took divorce from her first husband Jabir Hussain and after obtaining divorce from her first husband, she got married with the petitioner herein. Thus, it is clear that opposite prty No 2 is the legally wedded wife of Jabir Hussain only and the marriage



performed by her with the petitioner herein, if so, is an illegal marriage. Thus, on this ground alone, opposite party No 2 is not entitled to get any maintenance from the petitioner herein.

7 So far as the younger daughter of opposite party No 2 Al Shifa Daniya is concerned, perusal of the evidence further shows that there is no evidence available on record which establishes the fact that both petitioner and opposite party No 2 have resided jointly as husband and wife at any point of time. However, the learned Family Court, on the basis of the photostat copy of the passbook of Bihar Gramin Bank and photostat copy of ration card arrived on the conclusion that Al Shifa Daniya is the daughter of the petitioner herein as name of the petitioner is mentioned as the father of Al Shifa Daniya in the said documents. But the documents, relied upon by the learned Family Court, were not confronted with the petitioner herein during his examination or cross examination nor the said documents were exhibited by the concerned Family Court. Otherwise also, the said documents were only the photostat copies, therefore, were also not admissible in the evidence. Thus, finding of the learned Family Court that Al Shifa Daniya is the daughter of the petitioner is also perverse.



8 Resultantly, as discussed above, I find that the impugned order passed by the learned Family Court is liable to be and is hereby set side. This revision petition is allowed.

(Arvind Singh Chandel, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.09.2024
Transmission Date	18.09.2024

