

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1528 of 2019

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

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KAMAL KUMAR S/O- Late Nand Kumar R/O Village- Budhawal, P.S.- Jagdishpur, District - Bhojpur.

... .. Petitioner/s

Versus

1. GAYATRI DEVI W/O- Kamal Kumar, D/O- Yogendra Prasad Singh R/O Village- Budhawal, P.S.- Jagdishpur, District - Bhojpur. at present R/O Village- Paithanpur, P.S.- Ara Moffasil, District- Bhojpur.
2. Ashutosh Kumar S/O- Kamal Kumar through guardianship of the O.P. no.1 R/O Village- Budhawal, P.S.- Jagdishpur, District - Bhojpur. at present R/O Village- Paithanpur, P.S.- Ara Moffasil, District- Bhojpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar Pradhan, Adv.
For the Respondent/s : Mr. Praveen Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 07-02-2024

Heard learned Advocate for the petitioner as well as learned APP for the State.

2. The instant revision is directed against an order of maintenance passed by the learned Principal Judge, Family Court, Bhojpur, Ara in Miscellaneous Case No. 74 of 2011, under Section 125 of the Cr.P.C. on 6th July, 2019.

3. By passing the order impugned, the petitioner has been directed to pay maintenance allowance @ Rs. 4,000/- per



month to the opposite party no. 1 and Rs. 4,000/- per month to their minor child, total being Rs. 8,000/- per month.

4. It is submitted by the learned Advocate for the petitioner that marriage of the parties was solemnized on 21st May, 2009, according to Hindu rites and ceremony in a local temple. After marriage, the said opposite party no.1 in all stay at her matrimonial home. On two occasions for about three and half months, she voluntarily left her matrimonial home along with her minor child and she is not entitled to get any maintenance on the ground that she voluntarily refused to stay with her husband and to lead happy and peaceful conjugal life.

5. It is also submitted by the learned Advocate for the petitioner that the petitioner is a T.V. mechanic. He does not have such means to pay maintenance allowance @ Rs. 8,000/- per month.

6. In the impugned order, the evidence led by the opposite party no. 1, on the income of her husband is recorded. She stated in her evidence that the petitioner has a shop of electronic items repairing and he earns Rs. 15,000/- per month from the said shop. Moreover, he earns Rs. 35,000/- per month from agricultural land and other sources of income. In the impugned order, the trial court recorded the evidence of the



brother of the petitioner, where he stated that the present petitioner is a Teacher of I.T.I.

7. Learned Advocate for the petitioner submits that the evidence of witnesses no. 2 and 3 to the effect that the petitioner is a Teacher of I.T.I. should not be considered, in view of the fact that there is no such pleading in the petition under Section 125 of the Cr.P.C. Evidence in the absence of pleadings cannot be considered.

8. Learned Advocate for the opposite parties, On the other hand, submits that it is not in dispute that the petitioner works as a T.V mechanic in his own shop. Though, this is not a case of the opposite party no. 1 that the petitioner is a Teacher of I.T.I. It has come from the evidence adduced by the parties on behalf of the petitioner during cross-examination. Therefore, such evidence is absolutely relevant and the court rightly considered the evidence on record and came to a finding that the petitioner has sufficient means to pay maintenance @ Rs. 8,000/- per month.

9. Having heard the learned Advocates for the parties and on careful perusal of the materials on record, it is not found that indisputably the petitioner earns Rs. 15,000/- per month as a T.V mechanic. He was directed to pay maintenance to his wife @ Rs. 4,000/- per month.



10. Even in case of unemployed person, notional income is directed to be considered on the basis of Minimum Wages Act. If, notional income of a person is Rs. 12,000/- per month, taking into account the wages available under the Minimum Wages Act, the opposite party no. 1 is entitled to get Rs. 4,000/- being 1/3 of the Rs. 12,000/- towards maintenance allowance per month.

11. The petitioner was directed to pay Rs. 4,000/- per month for the maintenance of their minor child. There is no evidence as such that the opposite party no. 1 has any source of income. On the contrary, it is stated by the opposite party no. 1 in her evidence that the petitioner earns Rs. 35,000/ from his agriculture and other sources of income. The said fact has not been denied by the petitioner in his evidence. On the contrary, O.P.W. Nos. 2 and 3 stated that the petitioner is a Teacher of I.T.I.

12. Considering such evidence on record, this Court is of the view that the amount of Rs. 4,000/- for the maintenance of the minor child of the parties is not at all unreasonable and excessive. Therefore, I do not find any merit in the instant revision and accordingly, the Criminal Revision is dismissed.

13. It is submitted by the learned Advocate for the opposite party no. 1 that till date petitioner has not paid any maintenance allowance to the opposite party no. 1, though he was



directed to pay maintenance from the date of filing of the application.

14. The opposite party no.1 is at liberty to file Execution Case under Section 128 of the Cr.P.C. for realization of arrears maintenance.

15. The petitioner is directed to scrupulously comply with the order.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

