

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1589 of 2019

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

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1. Sugina Khatoon @ Sugina Khatun Wife Of Md. Obaid Alam @ Md. Owaid Alam, Daughter Of Md. Alam Resident Of Village-Pirnagar, P.S.-Gwalpara, District-Madhepura.
 2. Md. Jisan @ Md. Ibrahim Son Of Md. Obaid Alam @ Md. Owaid Alam Under The Guardianship Of Her Natural Guardian Mother Sugina Khatoon @ Sugina Khatun Resident Of Village-Pirnagar, P.S.-Gwalpara, District-Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Md. Obaid Alam @ Md. Owaid Alam Son of Md. Zamiruz Zaman Khan @ Md. Zamirul Zaman @ Samerujj Khan Resident of Village-Pirnagar, P.S.-Gwalpara, District-Madhepura, Presently posted as Army man in Kashmir Range.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.N.K.Agrwal, Sr. Advocate Mr.Pawan Kumar, Advocate
For the State	:	Mr.Ram Sumiran Rai, APP
For Opposite Party No.2	:	Mr.Shailendra Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 07-02-2024 1. An order of dismissal of Misc. (Matrimonial) Case No. 83 of 2013 on the ground that the petitioner failed to prove that she is the legally married wife of the opposite party/husband is under challenge in the instant Revision.

2. The impugned order was passed by the learned Principal Judge, Family Court, Madhepura, on 4th of May, 2019. The learned Court below held that the petitioner failed to prove her marriage with the opposite party because of the fact that the



mother of the petitioner, who deposed as A.W. 1, could not say the date of marriage, name of the *Kazi*, who presided over the said *Muhammadan* marriage, the name of the witnesses, *Nikah Nama*, etc. On the other hand, all the witnesses on behalf of the opposite party in their evidence stated that there was no marriage between the parties and the minor child was not born in the wedlock between the petitioner and the opposite party. The witnesses also said that the petitioner was a lady of easy virtue and the child might be gotten by any person other than the opposite party.

3. The learned Trial Judge accepted the evidence of the witnesses on behalf of the opposite party and held that there was no marriage between the parties.

4. The learned Senior Counsel appearing on behalf of the petitioner submits that, at the instance of the petitioner, a case was registered under Section 498A of the IPC against the opposite party. The opposite party approached this Court for anticipatory bail. In the said proceeding, the petitioner submitted herself that she was ready for DNA test of herself, the child and the opposite party. By the order of this Court passed in Cr. Misc. No. 28849 of 2014, DNA test of the child and the parties was done. On examination, the Senior Scientific Officer, State



Forensic Science Laboratory, submitted a report stating, *inter alia*, that the opposite party is the biological father of the child, who was given birth by the petitioner.

5. In a proceeding under Section 125 of the Cr.P.C., it has been consistently held by the Hon'ble Supreme Court as well as different High Courts that strict proof of marriage of the parties is not necessary, if from the circumstances it is ascertained that there is a relationship or there was at any point in time relationship between the petitioner and the opposite party as husband and wife, the petitioner is entitled to get maintenance.

6. In the instant test, it is scientifically proved that the minor child of the petitioner is born in the wedlock between her and opposite party. After, the DNA test, having been submitted before this Court, the opposite party contended that he is ready to keep the complainant/petitioner along with the child at his place of posting with full dignity and honour, but at present he would not take them to his new place of posting. But after some time, he is ready to keep them and also ready to make payment of Rs. 8,000/- per month to the complainant from October, 2019, by depositing the same in the bank account of the complainant/petitioner by second week of every succeeding



month.

7. In view of such clear admission before this Court in a judicial proceeding, can the opposite party claim that he is not the husband of the petitioner. My definite and conclusive answer is in the negative.

8. Therefore, I hold that the petitioner is legally married wife of the Opposite Party. The learned Trial Judge wrongly decided and dismissed Misc (Matrimonial) Case No. 83 of 2013.

9. Therefore, the impugned order, dated 4th of May, 2019, passed by learned Principal Judge, Family Court, Madhepura is quashed and set aside.

10. It is already held that the petitioner is the legally married wife of the opposite party. The learned Trial Judge is directed to adjudicate the quantum of maintenance payable to the petitioner on the basis of the evidence on record. If the parties want to adduce evidence on the point of income of the opposite party only, they are at liberty to adduce them. The parties are at liberty to act on the served copy of the order.

11. The learned Trial Judge is directed to dispose of Misc (Matrimonial) Case No. 83 of 2013 within three (3) months from the date of communication of this order.



9. The instant Revision is accordingly allowed.

(Bibek Chaudhuri, J)

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