IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.64 of 2025

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

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Gaurav Kumar S/O Shri Vijay Kumar Gupta Permanent Add- Sunita Bhawan, Basant Vihar Colony,Plot No.781 , Chitra Chaas, Dist- Bokaro, State- Jharkhand Pincode-827013, Present add- Flat No. 501, 502 B Block Royal Awas, Latabari, N.H-37, P.S- Bokakahat, Assam, Pincode 785612

... ... Petitioner/s

Versus

1. The State of Bihar
2. Radha Kumari D/O Uma Shankar Prasad, W/O Gaurav Kumar At present resident of village and P.S- Haspura, (Smt. Saadi Mahal, Saundik Hardware, Keshaw Market near Transformer), Dist- Aurangabad.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Adv.
For the Respondent/s : Mr. Madan Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

6 30-07-2025 The instant criminal revision is directed against an order of maintenance passed by the learned Principal Judge, Family Court at Aurangabad (Bihar) in Maintenance Case No. 89 of 2023, under Section 125 of the Cr.P.C. on 30^{th} October, 2024, directing the petitioner to pay Rs. 45,000/- per month to the opposite party no. 2 towards maintenance w.e.f. the date of filing of the application within 15 days of each succeeding month. It was further directed that the arrears maintenance have been made in 40 equal installments along with current maintenance allowance.

2. Indisputably, marriage between the parties was solemnized on 7th December, 2022. The opposite party no. 2 stayed at her matrimonial home only for about two weeks. It is stated by the opposite party no. 2 that she was compelled to leave her matrimonial home because of the fact that the petitioner and her other matrimonial relation illegally demanded more dowry from the opposite party no. 2, which her parents could not satisfy. After a lapse of about 01 month and 18 days, the opposite party no. 2 was compelled to file an application under Section 12(1) (a) of the Hindu Marriage Act before the learned Principal Judge, Family Court at Aurangabad, which was registered as Matrimonial Case No. 291 of 2024.

3. It is relevant to mention only at this stage that opposite party no. 2 prayed for nullity of marriage on the ground of impotency of the petitioner. The trial court on examination of the evidence adduced by both the parties passed a decree, declared the marriage between the parties a nullity, on the ground of impotency of the petitioner. In the said Judgment the petitioner was directed to pay a sum of Rs. 35,00,000/- to the opposite party being the cost of stridhan property which the opposite party allegedly brought from her paternal home at the time of marriage.

4. Now the dispute between the parties boils down on the question as to whether the order passed by the learned Principal Judge, Family Court, Aurangabad, directing the petitioner to pay Rs. 45,000/- per month is excessive without considering the annual income of the petitioner.

5. It is not in dispute that petitioner works in Numaligarh Refinery Limited, Assam as an Officer and in paragraph-17 of the Judgment passed by the trial court, it was held that the petitioner use to get Rs. 1,72,152.88/- towards his monthly salary. Learned trial judge on due consideration of record as well as salary slip recorded in his Judgment that monthly income of the petitioner is as follows:-

Current basis pay	- Rs. 73810.00
D.A.	- Rs. 33066.88
North East Allowance	- Rs. 7381.00
Cafeteria approach	- Rs. 25833.00 (i.e. 35% of basic)
Superannuation benefit	- Rs. 3206.00 (i.e. 30% of Basic + D.A.)
Total	**- Rs. 1,72,152.88/- (One lakh seventy two thousand one hundred fifty two)**

6. It is submitted by the learned Advocate on behalf of the petitioner that the trial judge committed apparent error in computing the monthly income of the petitioner. It is submitted by him that the allowance under fabricate approach is payable to

the petitioner on the basis of actual expenditure per month in cafeteria. Superannuation benefit is available to the petitioner only at the time of superannuation. Therefore, the trial court was wrong in adding the above mentioned two components to the salary allegedly received by the petitioner.

7. Learned Advocate on behalf of opposite party, on the other hand, submits that even if these two components are deducted, the net salary of the petitioner is more than Rs. 1,00,000/- per month. *However, in* ***Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy****,* reported in ***A.I.R. 2017 SC 238,*** the Hon'ble Supreme Court referring to its previous Judgment in ***Dr. Kulbhushan Kumar Vs. Raj Kumari & Anr.,*** reported in ***(1970) 3 SCC 129****,* held that 25% of husband's net salary would be just and proper to be awarded as maintenance to the respondent/wife.

8. The learned Advocate for the petitioner further submits that the petitioner is liable to his parents. He has to incur cost of his personal expenses. Therefore, it is not possible for him to pay Rs. 45,000/- per month towards maintenance allowance.

9. It is also submitted by him that indisputably the opposite party/wife is an educated lady. She is an M.Sc in

Chemistry. She is capable of independent earning and being an educated lady why should the opposite party would depend upon the dole of the petitioner. He has also raised question as to the status of the opposite party. It is submitted by him that the opposite party being inhabitant of Muffasil Town in the District of Bokaro in Jharkhand does not have the status to get Rs. 45,000/- per month. In other words, such huge amount is not necessary for the opposite party no. 2 for her maintenance. Therefore, the trial court's decision suffers from illegality and impropriety and the same is liable to be set aside.

10. Having heard the learned counsels for the parties, let me now consider the actual income of the petitioner, which requires consideration to fix maintenance allowance in favour of the opposite party/wife. The petitioner submitted and relied on the documents up to the month of September, 2024. In the meantime, almost one year have elapsed.

11. It is needless to say that the petitioner works in a Central Government Organization. At least, in the meantime, there were two occasions where D.A. of the petitioner was increased. The petitioner has not come forward with the current pay slip before this court.

12. The learned Advocate for the petitioner is

perfectly correct that from the basis salary income tax payable by the petitioner and Employees Provident Fund contribution shall be deducted. Income tax payment and G.P.F. contribution of the petitioner, as per the salary slip, relied on by the petitioner dated 30th September, 2024 was Rs. 1,7761 and Rs. 12825/-. Thus, the said contribution, amounting to Rs. 30586/- would be deducted from his salary.

13. This Court holds that in the mean time D.A. of the petitioner has increased at least by Rs. 5,000/- and there would be one more increment in basic pay. Thus, this Court holds that there would at least Rs. 8,000/- increased in the salary. If the said sum of Rs. 8,000/- is deducted from Rs. 30586, statutory deduction comes to Rs. 22586/-. If the said amount of Rs. 22,586/- is deducted from Rs. 1,72,152.88/-, the net salary of the petitioner comes to Rs. 1,49,562/-.

14. So far as the fixation of quantum of maintenance, as per the status of the parties, the Hon'ble Supreme Court in ***Rinku Baheti Vrs. Sandesh Sharda, reported in 2024 SCC OnLine SC 3801***, the Hon'ble Supreme Court held as hereunder:-

> "***80.*** *We have serious reservations with the tendency of the parties seeking maintenance or alimony as an equalisation of wealth with the other party. It*

is often seen that parties in their application for maintenance or alimony highlight the assets, status and income of their spouse, and then ask for an amount that can equal their wealth to that of the spouse. However, there is an inconsistency in this practice, because the demands of equalisation are made only in cases where the spouse is a person of means or is doing well for himself. But such demands are conspicuously absent in cases where the wealth of the spouse has decreased since the time of separation. There cannot be two different approaches to seeking and granting maintenance or alimony, depending on the status and income of the spouse. The law of maintenance is aimed at empowering the destitute and achieving social justice and dignity of the individual. The husband is under a legal obligation to sufficiently provide for his wife. As per settled law, the wife is entitled to be maintained as far as possible in a manner that is similar to what she was accustomed to in her matrimonial home while the parties were together. But once the parties have separated, it cannot be expected of the husband to maintain her as per his present status all his life. If the husband has moved ahead and is fortunately doing better in life post his separation, then to ask him to always maintain the status of the wife as per his own changing status would be putting a burden on his own personal progress. We wonder, would the wife be willing to seek an equalisation of wealth with the husband if

> *due to some unfortunate events post-separation, he has been rendered a pauper?"*

15. In the instant case, the parties are separated. I have already held that the petitioner earns approximately Rs. 1,49,562/- as on this date from his salary.

16. 25% of the said amount comes down to Rs. 39,640/- per month. The petitioner is under obligation to pay the said amount to the opposite party.

17. In view of the above discussion, the amount of maintenance is modified.

18. The petitioner is directed to pay maintenance of Rs. 39,640/- per month to the opposite party from the date of filing of the application.

19. With the above modification with regard to quantum of maintenance, the instant criminal revision is disposed of.

(Bibek Chaudhuri, J)

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