

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.150 of 2023

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

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AMIT GAURAV Son of Ashok Kumar Singh R/V- Jaitpur, P.S.- Barahiya,
District- Lakhisarai, At present S.S.A.P.F., Building 13, Raja Ram Mohan Roy
Road, Richmond Circle Woodland Hotel, Bangalore, Karnataka

... .. Petitioner/s

Versus

1. The State of Bihar
2. Arpana Wife of Amit Gaurav R/V- Jaitpur, P.S.- Barahiya, District-
Lakhisarai, Presently Residing at Lalit Narayan Mithila University,
Kameshwar Nagar, P.S.- L.N.M.U., District- Darbhanga

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amarnath Kumar, Advocate
For the Respondent/s	:	Mr. Satya Nand Shukla, A.P.P.
For the O.P. No.2	:	Mrs. Nivedita Nirvikar, Sr. Advocate
		Mr. Shashank Shekhar, Advocate
		Mrs. Asmita Bharti, Advocate
		Mrs. Shashi Priya, Advocate
		Mr. Sumit Kumar Bubna, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

14 28-01-2025 The instant criminal revision is directed against an

order dated 16.01.2023 passed by the learned Principal Judge,

Family Court, Darbhanga in Maintenance Case No.38 of 2018

directing the present petitioner to pay maintenance in favour of

the opposite party No.2 herein at the rate of Rs.12,000/- per

month for her and Rs.8,000/- per month for the minor child of

the parties, total being Rs.20,000/- per month.

2. It is not in dispute that the opposite party No.2 is

the legally married wife of the petitioner. Their marriage was

solemnized on 10.03.2016, just after one year of marriage they



were blessed with a child, who was born on 17.03.2017.

3. It is submitted by learned Advocate for the petitioner that the opposite party No.2 left the association of the petitioner alongwith their minor child on/or from 25.12.2017. Finding no other alternative, the petitioner filed a suit for divorce in the year 2018.

4. The learned Advocate on behalf of the petitioner submits that at the time of hearing of the application under Section 125 of the Cr.P.C., the petitioner could not produce his salary slip and the Court held without any positive material that monthly income of the petitioner was Rs.80,000/- on the date of delivery of impugned judgment. However, in the instant criminal revision, the petitioner has filed salary slip for the month of December, 2022 which shows that gross salary of the petitioner was Rs.69008/-. It is also found that petitioner is an employee of Employer Fund Organization. It is further submitted by the learned Advocate for the petitioner that the petitioner is to reside in Bangalore for his job and the cost of living in Bangalore is higher than that of Bihar. The Court is required to see the said aspect to find out as to whether the petitioner had sufficient means to pay a sum of Rs.20,000/- per month or the amount is highly inflated causing petitioner's



hardship in the matter of compliance.

5. Learned Advocate for the petitioner next submits that the opposite party is highly educated, she has Postgraduate Degree in Chemistry, she earns good amount of money as a Guest Teacher of 10+2 School. It is also submitted by the learned Advocate for the petitioner that after institution of the suit for divorce, the petitioner as a retaliatory measure lodged an F.I.R. under Section 498A of the I.P.C. and other penal provisions not only against him but also against his old ailing father. Thus, the opposite party No.2 has caused mental harassment to the petitioner.

6. Learned Senior Advocate on behalf of the opposite party No.2 on the other hand submits that the petitioner filed the suit for divorce before the learned Principal Judge, Family Court at Lakhisarai. Since, the petitioner has been residing at her paternal home at Darbhanga, she made an application for transfer of the said suit before this Court to the Court of the learned Principal Judge, Family Court at Darbhanga, the said application was allowed.

7. The petitioner has challenged the order of this Court of transfer of suit for divorce before the Hon'ble Supreme Court, the Hon'ble Supreme court dismissed the SLP filed by



the petitioner. This Court while passing the order of transfer of the suit directed the Trial Court to dispose of the suit for divorce within three months from the date of transfer. Since, the Trial Court failed to dispose of the suit for divorce, the petitioner filed an application for contempt being MJC No.2384 of 2023 against the learned Principal Judge, Family Court at Darbhanga, the said application is still pending. Thus, only purpose of the petitioner is to linger the litigation between the parties for an unlimited period.

8. The learned Senior Advocate on behalf of the opposite party No.2 has raised a question that the petitioner is able to peruse the legal proceedings upto the Hon'ble Supreme Court but he is not in a position to pay maintenance allowance and even in the instant proceeding he filed applications disputing the quantum of maintenance, which the opposite party No.2 is entitled to get.

9. In a proceeding under Section 125 of the Cr.P.C. the following factors are required to be proved :-

(i) whether there is valid marriage between the parties;

(ii) whether the husband has sufficient means to maintain his wife;



(iii) whether the wife has been refused and neglected to be maintained by her husband and;

(iv) whether the wife has no means to maintain herself.

10. With regard to the last point it is frankly admitted by the learned Senior Advocate on behalf of the opposite party No.2 that the opposite party No.2 was a Guest Teacher of a school but at present she has been removed from her temporary nature of work on the basis of some government order. So she is not working anywhere and she does not have means to maintain herself as well as minor child of the parties.

11. Now comes the question as whether the petitioner has sufficient means to maintain the opposite party no.2 and their minor child. From the salary slip of December, 2024 it is ascertained that the petitioner's gross income is Rs.68,555/-. The petitioners at present is not getting H.R.A. most probably due to the reason that he has been allotted with the official quarters.

12. In the case of *Matapher Vs. State of U.P. and another*, reported in *2024 CrL LJ (NOC 371) 122*, the Allahabad High Court held relying on the decision of the Hon'ble Apex Court in *Dr. Kulbhushan Kumar Vs. Smt. Raj*



Kumari & another, reported in *1970(3) SCC 129* has held that 25% of the husbands net salary would just and proper to be awarded as maintenance allowance to the wife. In *Kalyan Dey Chaudhary Vs. Rita Dey Chaudhary Nee Nandy*, reported in *(2017) 14 SCC 200*, the Hon'ble Apex Court has followed the quantum of maintenance fixed by the Hon'ble Apex Court in *Kulbhushan Kumar (supra)* that 25% of net income of the husband should be paid to the wife as maintenance.

13. In para-9 of the impugned judgment it is held by the Trial Court that apart from the salary, the petitioner has landed property through which he earns considerable amount of money. Said fact has not been challenged in the instant criminal revision as well as during argument by the petitioner.

14. For the reasons stated above, this Court is of the view that the amount of Rs.20,000/- for the wife and the minor child of the parties is not excessive. The petitioner maintained status of wife/opposite party No.2 of a government employee, she and the child of the parties have the right to live with dignity in conformity with their status.

15. Considering such aspect of the matter, I do not find any merit in the instant criminal revision and accordingly, the revision application is disposed of.



16. The petitioner is directed to comply with the Trial Courts order in respect of payment of current as well as arrear maintenance within one month from the date of this order.

(Bibek Chaudhuri, J)

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