

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.362 of 2021**

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

Rajesh Kumar @ Rajesh Yadav Son Of Late Suresh Prasad Yadav, Resident
Of Village - Rupauha, P.S.- Sangrampur (Teria Bamber), District - Munger.
... .. Petitioner/s

Versus

1. The State of Bihar
2. Soni Devi Wife of Rajesh Kumar Yadav D/o Udayanand Yadav, Resident of
Village - Rupauha, P.S.- Sangrampur (Teria Bamber), District - Munger. At
presently resident of village - Maharajganj Lahita, P.S.- Banka, District -
Banka.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Md. N. Huda, Advocate Md. Harun Quareshi, Advocate
For the State	:	Mr. Upendra Kumar, APP
For the O.P. No.2	:	Mr. Kumar Kamal Nayan, Advocate

**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT**

Date : 15-04-2025

The present revision petition has been preferred by the petitioner against the impugned final order dated 27.02.2021 passed by learned Principal Judge, Family Court, Munger in Maintenance Case No. 25 of 2015, as per which learned Family Court has directed the petitioner to pay Rs.9,000/- per month to the O.P. No.2 towards her maintenance as well as that of her child.

2. The factual background of this case is that on 23.02.2015 O.P. No.2/Soni Devi (wife of the petitioner) filed a maintenance petition under Section 125 Cr.PC for her maintenance as well as that of her minor daughter @ Rs.



10,000/- per month from her husband, who is petitioner herein, claiming that marriage between Soni Devi (O.P. No.2 herein) and Rajesh Kumar (petitioner herein) was solemnized on 12.03.2011 as per Hindu Rites and Customs. After the marriage, Soni Devi joined the matrimonial home of her husband and on account of non-fulfillment of illegal demand of dowry, the marriage started running into rough weather and ultimately, the O.P. No.2/wife was ousted from her matrimonial home along with her child on 26.02.2014, since when she has been living at her maik. It has been further claimed that Rajesh Kumar is a Constable in CRPF having monthly salary of Rs.25,000/- besides annual income of Rs.60,000/- from agricultural land.

3. On notice, Rajesh Kumar appeared before the Family Court and contested the maintenance petition denying the allegation of demand of dowry and cruelty therefor. However, he has admitted his marriage with Soni Devi and the paternity of the child born to her. However, he has claimed that prior to the marriage itself, Soni Devi was having illicit relationship with one Shakaldeo Yadav which was fraudulently concealed from him prior to solemnization of the marriage. He has further pleaded that during his absence at home, his wife Soni Devi left her matrimonial home in the month of February,



2014 along with the daughter. He has also pleaded that he has also one 75 years old mother dependent upon him. He has admitted that he is Constable in CRPF but he has claimed that his monthly income is Rs.16,000/-, out of which Rs.1000/- is deposited in the Provident Fund and he pays Rs.3000/- per month to his mother for her maintenance besides expending Rs.8,000/- per month on himself and saving Rs.4,000/- per month.

4. During trial, Soni Devi, petitioner before the Family Court examined only herself as P.W.-1, whereas, Rajesh Kumar, Opposite party before the Family Court, examined five witnesses including himself as Opposite Party Witnesses.

5. After recording of the evidence and hearing of the parties, learned Family Court came to the conclusion that undisputedly Soni Devi is legally wedded wife of Rajesh Kumar and one minor daughter is born out of the wedlock who is living with her mother. Learned Family Court also held that Rajesh Kumar could not prove that his wife-Soni Devi has any illicit relationship with anybody. He also found that as per the evidence on record, the monthly income of Rajesh Kumar was Rs.30,000/-, whereas the O.P. No.2/Soni Devi was found to have no source of income to maintain herself and her child and



hence, learned Family Court directed Rajesh Kumar to pay Rs.9,000/- per month towards maintenance of wife-Soni Devi and the minor daughter living with his wife.

6. I heard learned counsel for the petitioner, learned APP for the State and learned counsel for the O.P. No.2.

7. Learned counsel for the petitioner submits that Soni Devi is living in adultery with one Shakaldeo Yadav and hence, she is not entitled to get any maintenance under Section 125 Cr.PC. He also submits that during evidence Rajesh Kumar has deposed that his monthly income is only Rs.16,000/- and hence, quantum of maintenance is on higher side in view of totality of the facts of the case. He also submits that there was no demand of any dowry or torture therefor and there was no question of ousting her from the matrimonial home. In fact, she left the matrimonial home on her own.

8. However, learned APP and learned counsel for the O.P. No.2 submit that there is no illegality or infirmity in the impugned order and hence, the present petition is liable to be dismissed. He further submits that admittedly Soni Devi is a legally wedded wife of Rajesh Kumar/petitioner herein and there is also no dispute regarding paternity of the minor child born out of the wedlock by the petitioner herein. He further



submits that Rajesh Kumar was Constable in CRPF and his monthly salary was Rs. 30,000/- as deposed by Soni Devi during the trial. However, Rajesh Kumar during cross-examination of his wife, has suggested that his monthly income is only Rs. 16,000/-. Such assertion on behalf of Rajesh Kumar was also made in his deposition and he had stated that he would file salary slip in support of his claim. However, no salary slip was filed by Rajesh Kumar on record, which shows that his monthly income was much more than Rs.16,000/- and just to conceal the real salary, he has failed to file any salary slip on record, despite his promise to the Court during his examination. He also submits that as per pleading, only allegation of Rajesh Kumar against Soni Devi is that prior to the marriage, she was having illicit relationship with one Shakaldeo Yadav and same was concealed from him at the time of marriage. However, he has not proved adulterous life of Soni Devi with anybody else, let alone Shakaldeo Yadav during subsistence of the marriage.

9. I considered the submissions advanced by both the parties and perused the material on record.

10. I find that admittedly Soni Devi is wife of Rajesh Kumar. I also find that minor child born to Soni Devi is admittedly daughter of Rajesh Kumar and she is living with her



mother who is living separately from her husband at her parental home.

11. As per submission of the parties, only following questions are required to be considered:

(i) Whether Soni Devi is living at her maikie without any rhyme or reason along with her minor daughter?

(ii) Whether Soni Devi is living in adultery and she is not entitled to get maintenance?

(iii) Whether the quantum of maintenance granted to Soni Devi and her daughter is sustainable in the eye of law.

12. Coming to the first question, I find that as per the claim of Soni Devi, after the marriage there was additional demand of dowry and marriage started running into rough weather on account of non-fulfillment of illegal demand of additional dowry and she was ultimately ousted from the matrimonial home along with her minor daughter, who was born out of the wedlock between Soni Devi and Rajesh Kumar. In her evidence, she has reiterated her statement regarding her living separately at her maikie. Even in her cross-examination, her evidence regarding harassment for additional dowry is intact, because she has given details of how she has made complaint to the police regarding her harassment by her husband. Even



otherwise, no lady, particularly after birth of a female child, would destroy her married life by leaving the matrimonial home without any rhyme and reason. Hence, I am of the considered view that she is living separately at her maikie on account of reasonable cause.

13. Coming to the second question whether Soni Devi is living in adultery. Here it would be relevant to mention that living in adultery is distinct from committing adultery. Living in adultery denotes a continuous course of conduct and not isolated acts of immorality. One or two lapses from virtues would be acts of adultery but would be quite insufficient to show that the woman was living in adultery. A mere lapse, whether it is one or two, and a return back to the normal life cannot be said to be living in adultery. If the lapse is continued and followed up by a further adulterous life, the woman can be said to be living in adultery. In this regard, one may refer to the following judicial precedents:

- (i) **Hitesh Deka Vs. Jinu Deka**
2025 SCC OnLine Gau 259
- (ii) **Sukhdev Pakharwal Vs. Rekha Okhale**
2018 SCC OnLine MP 1687
- (iii) **Ashok Vs. Anita**
2011 SCC OnLine MP 2249
- (iv) **Sandha Vs. Narayanan**
1999 SCC OnLine Ker 64
- (v) **Pandurang Barku Nathe Vs. Leela
Pandurang Nathe & Anr.**



1997 SCC OnLine Bom 264

14. However coming to the case on hand, I find that as per the pleading Rajesh Kumar has claimed that his wife-Soni Devi was having illicit relationship prior to the marriage itself and same was concealed, but there is no any allegation that subsequent to the marriage, she was seen to be having illicit relationship with Shakaldeo Yadav. Except the allegation that she had illicit relationship with Shakaldeo Yadav prior to the marriage, there was no pleading or cogent evidence to show that even after the marriage, she was having adulterous life with Shakaldeo Yadav. Hence for want of such pleading and evidence on record, this Court is of the view that Rajesh Kumar could not prove that his wife-Soni Devi was living in adultery dis-entitling her to get maintenance.

15. Coming to the question of quantum of maintenance, I find that as per the evidence on record it is proved that Soni Devi has no means of income to maintain herself and her minor daughter, whereas her husband Rajesh Kumar is a Government employee and as per the pleading of Soni Devi, he had monthly income of Rs. 25,000/- per month. However, in his pleading Rajesh Kumar has claimed that his monthly income is only Rs.16,000/-. Even during evidence, he



has deposed that his monthly salary was Rs.16,000/- and he has undertaken to the Court that he would file salary slip in support of his claim regarding his salary, but I find no salary slip filed by Rajesh Kumar on record. It shows that monthly income of Rajesh Kumar was more than Rs.16,000/- and that is why he has not filed his salary slip. In such situation, the claim of Soni Devi that monthly salary of Rajesh Kumar was Rs.25,000/- is found to be unrebutted and proved.

16. However, I find that besides Soni Devi- wife of Rajesh Kumar and the minor daughter, 75 years old mother of Rajesh Kumar is also one of the dependents upon him. Hence, total dependents upon Rajesh Kumar is found to be three including Soni Devi and her daughter and monthly salary of Rajesh Kumar is found to be Rs.25,000/- per month.

17. In such facts and circumstances, I find that quantum of maintenance is not on higher side. As such, there is no illegality or infirmity in the impugned order. Accordingly, the present petition is dismissed for want of any merit.

(Jitendra Kumar, J.)

ravishankar/-

AFR/NAFR	AFR
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