

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.341 of 2024

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

Vijay Kumar Mehta @ Vijay Kumar Son Of Rajendra Mahto @ Rajendra Prasad Mehta Resident Of Village - Dhab, Chanda, P.O. - Kharagpur, P.S. - Hariharganj, District - Palamu (Jharkhand)

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rinki Devi Wife of Vijay Kumar Mehta, Resident of Village - Ajaniya, P.O. - Khadiha, P.S. - Simra, District - Aurangabad (Bihar)
3. Puja Kumari Daughter of Rinki Devi and Vijay Kumar Mehta through Her Mother Rinki Devi, Resident of Village - Ajaniya, P.O. - Khadiha, P.S. - Simra, District - Aurangabad (Bihar)

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Aman Vishal, Advocate
For the Respondent/s : Mr. Anant Kumar-1, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

15 22-07-2025 The petitioner is the husband of the opposite party No.2 and father of the opposite party No.3. Opposite party NO.3 was born in the wedlock between the petitioner and the opposite party No.2. The opposite party Nos.2 & 3 filed an application under Section 125 of the Cr.P.C. praying for maintenance, which was registered as Maintenance Case No.122 of 2021 before the learned Principal Judge, Family Court, Aurangabad by an order dated 31.10.2023, the learned Principal Judge, Family Court, Aurangabad disposed of the above-mentioned case directing the petitioner to pay maintenance at the rate of Rs.3500/- per month to his wife/opposite party No.2 and Rs.1000/- per month to his



minor daughter/opposite party No.3.

2. The petitioner being aggrieved has challenged the said order before this Court under the provision of Section 19(4) of the Family Courts Act.

3. Marriage between the parties is not disputed. It is also not disputed that in the wedlock between the petitioner and the opposite party No.2, a minor child was born, who is now residing under the care and maintenance of her mother.

4. The petitioner has challenged the order of maintenance passed by the learned Principal Judge, Family Court at Aurangabad on the ground that the Trial Court did not consider that the petitioner is a disabled person, being handicapped by polio, he is not able to perform any work. He has also no source of income to maintain his wife and minor child.

5. Secondly, it is contended by the petitioner that the opposite party No.2 voluntarily left her matrimonial home and therefore, she is not entitled to get any maintenance under the provisions of Section 125(4) of the Cr.P.C.

6. On the contrary, the learned Advocate for the opposite party No.2 refers to the pleadings of the opposite party, which has been recorded in the impugned order wherein it has



stated that the petitioner had solemnized a second marriage with one Baby Kumari during the subsistence of his first marriage with the opposite party No.2. The said fact was however, denied by the petitioner in his pleading as well as deposition.

7. Be that as it may, the opposite party No.2 has been residing at her parental house, there is no evidence forthcoming that during the stay of the opposite party No.2 and her daughter, the petitioner pay a single farthing for their maintenance except the money, which was directed to be paid as a condition for bail in a case under Section 498A of the IPC. Non-payment of maintenance allowance, sufficiently shows that the petitioner has refused and neglected to maintain his wife and child. Therefore, the opposite parties are entitled to get maintenance allowance from the petitioner.

8. Now comes the quantum of maintenance allowance. I have already stated that the petitioner has taken a specific plea that he is a disabled person and not in a position to earn any money.

9. On the other hand, a counter affidavit has been filed on behalf of the opposite party No.2 & 3 stating, inter-alia, that the petitioner has considerable landed property. The land records are annexed with the counter affidavit. It appears from the land



records that more than 16 acres of land were recorded in the names of the father and uncles of the petitioner, in total four in numbers. Thus, after the death of their father they got 04 acres of land each. The father of the petitioner is alive. He has another son. Thus, the petitioner has inherited at-least 01 acre of land, if not more. The petitioner is absolutely silent as to the agricultural income, which he derives from the agricultural land.

10. It is contended on behalf of the petitioner that as he does not performed any work due to his physical disability, he is not in a position to maintain his wife and minor child.

11. Since, this Court presumes that the petitioner has income from his agricultural land, it is his legal and moral responsibility to maintain the wife and minor child.

12. With regard to quantum of maintenance, it is submitted by the learned Advocate for the petitioner that the Trial Court did not considered the amount of Rs.3,000/- which the petitioner has been paying as the condition for bail. If the said amount is added to a sum of Rs.3500/-, it comes to Rs.6500/- considering present day market price and minimum need of a lady and her minor child aged about 2½ years, the amount of maintenance at the rate of Rs.3500 + 1000, total being Rs.4500/- is considered to be below minimum.



13. However, this Court does not want to inheritance the maintenance allowance fixed by the learned Principal Judge, Family Court at Aurangabad on the basis of evidence on record because of the fact that the opposite party No.2 is also getting a sum of Rs.3,000/- as the condition for bail.

14. Under such circumstances, I do not find any merit in the instant criminal revision and accordingly, the instant revision is dismissed on contest. There shall however be no order as to cost.

15. Lower Court Records be returned.

(Bibek Chaudhuri, J)

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