

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.371 of 2023

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

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1. REEMA KUMARI @ RIMA DEVI Wife of Sh. Indrajeet Rai @ Lalu Rai, D/o Late Tapeswar Rai Resident of village - Rahardiyar, P.O. and P.S. - Sonapur, Distt. - Saran (Chhapra) at present residing at village- Ratanpura, P.O. - Bithauli, P.S. - Bhagwanpur, Distt. - Vaishali
 2. Rimpi Kumari D/o Sri Indrajeet Rai @ Lalu Rai under Guardianship of mother Reema Kumari @ Rima Devi Resident of village - Rahardiyar, P.O. and P.S. - Sonapur, Distt. - Saran (Chhapra) at present residing at village- Ratanpura, P.O. - Bithauli, P.S. - Bhagwanpur, Distt. - Vaishali

... .. Petitioner/s

Versus

1. The State of Bihar
2. Indrajeet Rai @ Lalu Rai Son of Late Deen Dayal Rai R/o Village - Rahardiyar, P.S. - Sonpur, Distt. - Saran (Chhapra)

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Ms. Namrata Mishra
For the Respondent/s	:	Mr. Uma Shankar Prasad Singh

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 23-07-2025 In Maintenance Case No. 47 of 2011, the petitioner was granted maintenance allowance at the rate of ₹ 6,000/- per month and ₹ 5,200/- per month towards arrear maintenance, total being ₹ 11,200/- per month vide order dated 12th August 2011.

2. The petitioner filed an application under Section 127 CrPC seeking enhancement of the maintenance allowance from ₹ 6,000 to ₹ 25,000 per month, citing an increase in the salary of the opposite party No. 2 (husband). The application



was registered as Misc. Case No.92 of 2022. The learned Principal Judge, Family Court, Vaishali (Hajipur), dismissed the miscellaneous case on the following grounds:

(i) The petitioner has been receiving a sum of ₹11,200 per month as maintenance, including arrears.

(ii) The net salary of the O.P./husband is only ₹8,305, and in view of that amount, the petitioner's prayer cannot be entertained.

(iii) The O.P. No. 2 has taken a medical loan, resulting in substantial deductions; therefore, the petitioner's claim is unsustainable.

3. Beside the above-mentioned grounds which are stated in black and white in the order dated 01st March 2023, it is submitted by the learned Advocate on behalf of the opposite party that the opposite party/husband has solemnized a second marriage and he requires to maintain his wife and children born in the said second marriage. Therefore, it is not possible for him to make any enhanced payment of maintenance.

4. I have heard the learned Advocate for the petitioner and the learned Advocate for the opposite party. The petitioner has filed a salary-slip for the month of December 2022 issued in



the name of the opposite party no. 2, on perusal of which this Court finds that the opposite party no. 2 has a gross pay of ₹ 56,017/-. It is now settled that the net salary of a person is to be fixed on deduction of income tax, N.P.S. or GPF. The pay slip does not show any deduction of income tax. The only deduction was a sum of ₹ 4678/- towards the New Pension Scheme. It is contended on behalf of the opposite party that he took medical loan for his medical expenses. From the four-corners of the pay-slip, I do not find that the opposite party took any medical loan. On the contrary, he took society loan for which a sum of ₹ 15637/- is deducted and a loan from the co-operative for which a sum of ₹ 16147/- is deducted. These deductions will not be considered for ascertaining the net income of the O.P./husband.

5. Thus, this Court holds that the net salary of the OP/husband comes to ₹ (56,017-4,678)= ₹ 51,339/-.

6. Though, the petitioner claims maintenance at the rate of ₹ 25,000/- per month, the learned Advocate for the petitioner refers to the decision of the Hon'ble Supreme Court in ***Kalyan Dey Chowdhury vs Rita Dey Chowdhury Nee Nandy*** reported in ***AIR 2017 SC 2383***. It is held by the Hon'ble Supreme Court that the petitioner is entitled to get 25 % of the net salary. On calculation, this Court finds that the



O.P./husband's net salary was ₹ 51,339/- in the month of December 2022. The learned Advocate for the petitioner has not filed the current salary slip of the O.P. No. 2. It is not in dispute that the O.P. No. 2 is an employee of Indian Railways, a Central Government concern. Thus, it is obvious that considering 2023, 2024 and January 2025, D.A. (Dearness Allowance) of the opposite party would have increased at least five times. Considering such aspect of the matter, the opposite party's net income must be more than ₹ 51,339/- calculating the net income pay 25 %, it comes down to ₹ 13,000/- per month. The petitioner, is, therefore, entitled to get a sum of ₹ 13,000/- per month. In view of above finding, the impugned order passed by the learned Principal Judge, Family Court, Vaishali at Hajipur in Miscellaneous Case No. 92/2022 on 01st March 2023 is quashed and set aside.

7. The application under Section 127 of the CrPC is allowed. The O.P./husband is directed to pay maintenance allowance at the revised rate of ₹ 13,000/- per month from the date of this order.

8. The immediate employer/DDO of the O.P./husband is directed to deduct the aforesaid amount from the salary of the O.P. and deposit the same in the Bank Account of the petitioner.



9. With the aforesaid order, the instant criminal revision is accordingly allowed on contest.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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