

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.450 of 2024

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

Satendra Kumar Jha Son of Shyama Nand Jha Resident of village - Ram Pur,
P.O.- Dalan (Hasanganj), P.S.- Katihar, District - Katihar

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Jyoti Jha Wife of Satendra Kumar Jha D/o Sri Binay Jha, Resident of Village - Ramuur, P.O.- Dalan (Hasanganj), P.S.- Katihar, District - Katihar At present Residing at Mohalla - Nasrate Khani, Nath Nagar, P.S.- Lalmatiya (Nath Nagar), District - Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bimal Kumar, Advocate Mr. Raghvendra Kumar Singh, Advocate
For the State	:	Mr. Sunil Kr. Pandey, APP
For the O.P. No.2	:	Mr. Ramakant Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

8 24-04-2025 The instant Revision Application has been filed against the order dated 22.03.2024 passed in Maintenance Case No. 109 of 2017, by the Principal Judge, Family Court, Bhagalpur, by which the Petitioner was directed to pay Rs. 10,000/- as maintenance from the date of filing of the instant petition.

2. Marriage between the Petitioner and Opposite Party No.2 was solemnized in 'Manaskamna Mandir' Nath Nagar, Bhagalpur on 01.05.2014 according to Hindu Marriage rites and customs. After one year of spending conjugal life with paramount happiness, his family members started to torture the



petitioner for bringing dowry and on 10.05.2015 the Petitioner and his family members demanded either household things and a motorcycle or Rs. 1,50,000. In opposing such demand made by the Petitioner, all the family members of the Petitioner and his family members started torturing the Opposite Party physically, mentally and economically. They sent back the opposite party to her parental house. On 25.12.2015 a Panchayati was held in the house of the Petitioner but the Petitioner and his family members refused to keep the Opposite Party at their place without dowry. Opposite Party states that the Petitioner is the only son of his parent and has 40 bighas of land and annual source of Income is near about 12 to 15 Lakhs rupees.

3. Whereas the Petitioner in its petition mentions that the Opposite Party has willfully deserted the Petitioner and abstained from observing the obligation of the nuptial knot. The Opposite Party No. 2 has not disclosed any cause of action in the petition.

4. In the impugned order it has come up that she was taken to matrimonial home upon performance of “Bidagari” but on her visit to the said place, she was confined in a solitary room for a period of about more than a week and when she was



brought out, her pitiable condition witnessed by local public representatives. They informed police and she was referred to Sadar Hospital Katihar. There is no dispute between the parties that after separation the petitioner is living along with her child in the house of her father. In course of argument, it is submitted that the in-laws of the petitioner started torturing her for the realization of dowry only after about one year of the marriage and the pinnacle of the cruelty took place when the petitioner was left stranded on 07.08.2015 by the opposite party/husband on the road while coming to home in course of their visit to Deoghar.

5. On the contrary, the opposite party/husband contends that he never left any stone unturned for keeping the best care of the petitioner/wife and he always treated her with all the affection, care and respect. It is submitted by the opposite party/husband that the petitioner/wife has unreasonably withdrawn herself from the matrimonial home and she is deliberately ignoring to observe the obligations of the nuptial knot.

6. This Court finds that there is a lack of evidence about the actual income of the Petitioner but it has come up in the Examination-in-chief of the Opposite Party (herein the



Petitioner) that on the birth of his son, he has paid about Four Lakhs Forty-two thousand six hundred rupees to the Opposite Party on different dates along with some gold item on her birthday. Petitioner owns his own house where as the Opposite Party is living spending her life in a meager to no amount living at her paternal home along with the responsibility of a child living with her.

7. In the case of ***Rajiv Verghese v. Rose Chakkramankkil Francis***, 2024 SCC OnLine SC 3367, the Hon'ble Court held that the appellant was accustomed to a certain standard of living in her matrimonial home and therefore, during the pendency of the divorce petition, is also entitled to enjoy the same amenities of life as she would have been entitled to in her matrimonial home.

8. Section 106 of the **Indian Evidence Act, 1872** deals with the **burden of proof** in cases where a person is expected to know a particular fact. It is often applied in criminal cases to establish whether a person has particular knowledge or control over a situation. This section states that when a fact is specifically within the knowledge of a person, it is the responsibility (burden) of that person to prove or disprove that fact. This is particularly relevant in cases where evidence or



knowledge of a fact is within the exclusive knowledge of the accused or any other individual. In the instant case, no document supporting the income of the Petitioner is presented and the income from farming is a fact within the husband's knowledge, the burden is on him by producing Land records (e.g., Jamabandi, land records etc.); Crop pattern records; Income statements (if any); Agricultural subsidy receipts, etc. But the Court has not come across any such document presented by the Petitioner about his actual income or document presenting the acre of lands on which the cultivation is done.

9. Due to the failure of production of any such document by the Petitioner, this Court draws an adverse inference under Section 114 (g) of the Evidence Act: *“That evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it.”* combined with Section 106.

10. The Section gives the power to the Court to assume that the husband earns a reasonable income to maintain his wife, even without direct proof of income.

11. With the evidence produced by the Opposite Party, this Court firmly believes that the Petitioner is an able-bodied person and can earn well to maintain his minor child and wife.



12. In the case of **Anju Garg v. Deepak Kumar Garg**, reported in **2022 SCC OnLine SC 1314**, the Supreme Court emphasized that an able-bodied husband must earn by legitimate means to support his wife and minor children. The Court stated that the husband cannot shirk this responsibility by claiming a lack of income, highlighting that the duty to maintain is a fundamental obligation.

13. Calcutta High Court has taken the same view in **Swadesh Kumar Paul Vs. State of West Bengal and Anr.** reported in **2023 SCC OnLine Cal 3312**. In this report, the opposite party/husband did not lead any evidence with regard to his income. In his evidence it is stated that he was unemployed and used to performed house hold works in other house to earn his livelihood. A Coordinate Bench of Calcutta High Court held that the husband is duty bound to disclose his actual income before the Court, suppression of income can be a vital tool to come to a conclusion that the petitioner/husband being an able bodied person has sufficient income to maintain his wife/opposite party No.2.

14. In the instant case also, the petitioner denied the statement of the opposite party No.2 to the effect that he earns Rs.12 to 15 lacs per annum from cultivation. He is the owner of



40 Bighas of agricultural land. Moreover, it is stated by the opposite party No.2 on oath that the petitioner has his own house.

15. Indisputably, it is found from the materials on record that after the birth of the male child, the petitioner gifted a sum of Rs.4,25,000/- (Rupees four lacs twenty five thousand) as gift to his newly born son. This goes to suggest that the petitioner has sufficient means to maintain his wife.

16. In a very recent judgment, in the case of *Parvin Kumar Jain Vs. Anju Jain*, reported in (2025) 2 SCC 227, while deciding legality, validity and propriety of an order of alimony under Sections 24 & 25 of the Hindu Marriage Act, the Hon'ble Supreme Court made the following observation relying on another decision of the Hon'ble Supreme Court in the case of *Kiraj Jyot Maini Vs. Anish Pramod Patel*, reported in (2024) 13 SCC 66, held as herein under:-

“26. Furthermore, the financial capacity of the husband is a critical factor in determining permanent alimony. The Court shall examine the husband's actual income, reasonable expenses for his own maintenance, and any dependents he is legally obligated to support. His liabilities and financial commitments are also to be considered to ensure a balanced and fair maintenance award. The court must consider the husband's standard of living and the impact of inflation and high living costs. Even if the husband claims to have no source of income, his ability to earn, given his education and qualifications, is to be taken into account. The courts shall ensure that



the relief granted is fair, reasonable, and consistent with the standard of living to which the aggrieved party was accustomed. The court's approach should be to balance all relevant factors to avoid maintenance amounts that are either excessively high or unduly low, ensuring that the dependent spouse can live with reasonable comfort post-separation.”

17. On careful consideration of evidence on record, as well as the ratio laid down in the above-mentioned decisions, this Court is of the view that the learned Principal Judge, Family Court, Bhagalpur did not commit any illegality or material irregularity in granting maintenance allowance in favour of the petitioner at the rate of Rs.10,000/- per month. Thus, I do not find any ground for interference over the impugned order.

18. Accordingly, the order dated 22.03.2024 passed in Maintenance Case No. 109 of 2017, by the Principal Judge, Family Court, Bhagalpur is affirmed. The instant criminal revision is dismissed.

(Bibek Chaudhuri, J)

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