

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.415 of 2023

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

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Murari Ray @ Murari Rai Son of Sri Ram Kumar Ray @ Ram Kumar Rai
Resident of village-Harakhpura, P.S.-Gadhapura, District-Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar
2. KHUSHI @ KHUSHI KUMARI Daughter of Murari Ray @ Murari Rai Opposite Party Nos. 2 and 3 under the guardianship of Balram Singh, Male, aged about 68 years, Son of Late Ram Badhan Singh, Resident of village-Rahatpur, P.S.-Balua, District-Begusarai
3. MAYANK KUMAR Son of Murari Ray @ Murari Rai Opposite Party Nos. 2 and 3 under the guardianship of Balram Singh, Male, aged about 68 years, Son of Late Ram Badhan Singh, Resident of village-Rahatpur, P.S.-Balua, District-Begusarai

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
		Mr. Ashok Kumar, Advocate
For the State	:	Mr. Bharat Bhushan, A.P.P.
For the Pvt. Opp. Parties	:	Mr. Aaruni Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

11 24-07-2025 The petitioner is the father of the opposite party Nos.2
& 3.

2. Indisputably, the opposite party Nos. 2 & 3 have been residing in the house of their maternal uncle. There was an allegation of bride burning against the father of opposite party Nos.2 & 3. A case under Section 304B of the I.P.C. was registered.

3. Since, the unfortunate and unnatural death of the mother, the opposite parties have been residing in the house of



their maternal uncle. They as opposite parties filed an application under Section 125 of the Cr.P.C., which was registered as Maintenance Case No.31(M) of 2014 and the said maintenance case was disposed of by the learned Principal Judge, Family Court, Begusarai, directing the petitioner/father to pay Rs.3500/- each to opposite party Nos.2 & 3, total being Rs.7,000/- per month till they attained majority from the date of filing of the maintenance case. It was further directed that the arrear amount of maintenance shall be deposited in a Profit Bearing Saving Bank Account to be opened in the name of the Children of the petitioner. The petitioner has resisted the aforesaid order by filing the instant revision on the following grounds:-

(i) On the death of his wife, a criminal case being G.R. No.1803/2013 (Sessions Trial No.81/2014) was instituted against the petitioner and by a judgment dated 05.12.2024, the petitioner was acquitted of the charge. Therefore, the apprehension of the opposite party Nos.2 & 3 that if they would stay with their father, the prosecution case may hamper is no longer present at this stage.

(ii) It is submitted on behalf of the petitioner that the petitioner has only two bighas of land, which remains



submerged in water during most of the year. The petitioner can only cultivate one crop in his land and the said crop is consumed by the petitioner himself and he has no money to maintain his children.

(iii) It is contended that both the children of the petitioner have attained majority. Therefore, they are not entitled to get any maintenance at this stage.

(iv) Last but not the least, it is submitted by the learned Advocate for the petitioner that his children earn their livelihood by doing menial works in the house of their maternal uncle. The maternal uncle did not take any step for their education and upliftment. Therefore, for the benefit of the children, it is absolutely necessary to direct them to come and stay with the father, petitioner herein.

4. It is also proposed by the learned Advocate for the petitioner that the petitioner is ready to affect partition of his properties giving half share to his children. They can maintain themselves by the usufructs of the said landed property. The petitioner is also ready to construct a separate house in his village for his children, if they do not want to stay with him. However, it is not possible for him to pay maintenance to the opposite parties.



5. The learned Advocate on behalf of the opposite parties, on the other hand submits that the petitioner has not come forward with real picture of his landed property in order to prove his case. He examined the local Sarpanch, who however, did not face cross-examination by the learned Advocate on behalf of the opposite parties. Therefore, his evidence cannot be taken into consideration. There are materials on record that petitioner's family is the owner of 15 Bighas of land and by way of some oral and mutual arrangements, they are cultivating their lands and earn their livelihood. Therefore, the petitioner has independent source of income, which he suppressed both in the Trial Court as well as before this Court.

6. Under such factual background, the learned Advocate on behalf of the opposite parties calls upon this Court to accept the ratio laid down by the Hon'ble Supreme Court in the case of *Jasbir Kaur Sehgal (Smt.) Vs. District Judge, Dehradun and Others*, reported in (1997) 7 SCC 7.

7. The learned Advocate on behalf of the opposite parties refers to the observation made by the Hon'ble Supreme Court in Para-7 of the aforesaid judgment to impress upon this Court that where there is divorce claim made by the parties, one inflating the income and the other suppressing, an element of



conjecture and guesswork does enter for arriving at the income of the husband. It cannot be done by any mathematical precision.

8. On the same issue, the learned Advocate on behalf of the opposite parties refers to a decision of this Court in ***Dr. Shayan Ahamad Vs. The State of Bihar & Anr.***, reported in ***2017(4) PLJR 479***, it is held by a Single Judge of this Court that law requires that the Court must take into consideration the status of parties and the capacity of the husband to pay maintenance – at the time of claiming interim maintenance, wife had no income for supporting herself whereas husband-petitioner is a dental surgeon having clinics at Patna and Jehanabad. Thus, the Court adopted the principles of guesswork to ascertain the income of the husband.

9. On the same issue the learned Advocate for the opposite parties refers to another decision of the Division Bench of the Hon'ble Supreme Court in ***Shamima Farooqui Vs. Shahid Khan***, reported in ***2015(3) PLJR (SC) 58*** and of this Court in ***Brijesh Kumar Rastogi Vs. Smt. Kanti Rastogi*** reported in ***2009(2) PLJR 831***.

10. The learned Advocate on behalf of the opposite parties has strongly denied that the opposite parties are earning



their livelihood by doing menial works in the house of their maternal uncle. He has filed the identity card and the mark sheet of opposite party No.2 to show that she is pursuing Engineering Course in Birla Institute of Technology, MESRA, Lalpur Campus, Ranchi. The opposite party No.3 is a student of Class-12. Therefore, the maternal uncle of the opposite parties is taking care of the education of the said children.

11. Having heard the learned Counsels for both the parties, let me now consider the submission made by the learned Advocate for the petitioner that since he has been acquitted of the charge of committing murder of his wife, whether his children are free to stay with him.

12. An order of acquittal is passed only when prosecution fails to bring home the charge against the accused by adducing sufficient legal evidence. Failure on the part of the prosecution, does not and cannot remove the scar from the mind of the children when they accused their father for the unfortunate and unnatural death of their mother. Therefore, even if after acquittal the opposite parties do not want to stay with their father, their denial cannot be held that they without sufficient reason left the association of their father.

13. On perusal of the documents filed by the learned



Advocate on behalf of the opposite parties, I find that the opposite parties are being maintained properly by their maternal uncle. Therefore, for the development of the children, this Court finds that they should stay in the house of their maternal uncle.

14. Last but not the least, the learned Advocate on behalf of the petitioner submits that he will part with the half share of his landed property in favour of his children. He will also construct a house for them so that they can stay independently in the village of the petitioner on their own. A person, who can construct a separate house for his children after a long period of time from the death of his wife in the year 2013, coupled with the fact that during this 12 years he did not spend any farthing for the development and maintenance of his children, except some sum of money, which he paid on the basis of the order passed by this Court in a coordinate proceeding.

15. This Court is of the view that for the development of the opposite parties, they should stay separately and the petitioner is under obligation to maintain his children till the marriage of the opposite party No.2 and attainment of majority of opposite party No.3.

16. Therefore, I find that the order of granting maintenance by the learned Principal Judge, Family Court,



Begusarai ought to be affirmed and accordingly the impugned order is affirmed.

17. All other directions passed by the learned Principal Judge, Family Court, Begusarai shall remain enforce for compliance by the petitioner.

18. The instant criminal revision is accordingly, dismissed.

(Bibek Chaudhuri, J)

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