

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.627 of 2024

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

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Santosh Prasad son of Late Mani Prasad Sahu @ Late Mani Prasad Sah
Village- Naina Ghat Ps- Darbhanga Dist- Darbhanga

... .. Petitioner/s

Versus

Arpana Devi wife of Santosh Prasad Saha, D/o- Kamdev Saha Village- Naina
Ghat Ps- Darbhanga P/A- Janikinagar Po- Dhubhi Mahinathpur Ps- basopati
Dist- madhubani

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Dr. Anjani Pd. Singh
For the O.P. No. 2	:	Mr. R.S. Sharma, Advocate
		Ms. Smiti Bharti, Advocate
For the State	:	Dr. Ajeet Kumar

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 06-05-2025 This is an application under Section 19(4) of the Family Courts Act, challenging the legality, validity and propriety of an order dated 1st June, 2024 passed by the learned Principal Judge, Family Court, Madhubani in M.R. Case No. 67 of 2016, directing the petitioner to pay maintenance at the rate of Rs. 15,000/- per month to the opposite party with a direction that the amount of maintenance would be increased by 5% after every two years. It is further directed that the maintenance allowance shall be paid from the date of application within a date in the first week of each succeeding month.

2. The learned Advocate appearing on behalf of the petitioner has challenged the impugned order on the following



grounds:-

(i) the trial court did not consider the affidavit of assets and liabilities and without assessment of income of the petitioner fixed the quantum of maintenance only on assessment.

(ii) the petitioner was not given opportunity to contest the proceeding under Section 125 of the CrPC.

(iii) the impugned order was passed without even giving opportunity to the petitioner's advocate to argue the case on behalf of the petitioner.

3. The learned Advocate for the opposite party, on the other hand submits that the petitioner duly appeared in the trial court to contest the application under Section 125 of the CrPC. He filed his written objection in the trial court. He examined witnesses on behalf of him but subsequently, preferred not to adduce any evidence personally therefore, the trial court after recording evidence of the witnesses on behalf of both the parties fixed the case for argument. On the date of the argument, the learned Advocate on behalf of the opposite party, petitioner herein, was not present, therefore, the trial court had no other alternative but to dispose the case on the basis of the argument made by the learned Advocate on behalf of the petitioner. It is



further pointed out by the learned Advocate that in Paragraph No. 5 of the judgment, the trial court referred to the ocular testimony given by the witnesses on behalf of the opposite party/husband. It is also recorded in paragraph no. 14 of the impugned judgment that the witnesses of the opposite party stated that the opposite party helps in business of his father but they have not stated what type of business his father is doing and what is the income of the opposite party/husband.

4. In the trial court, neither of the parties filed affidavits of assets and liabilities as per the direction of the Hon'ble Supreme Court in ***Rajnesh v. Neha***, reported in **(2021) 2 SCC 324**. When the parties did not file affidavits of assets of liabilities during trial of the case, the petitioner herein cannot take advantage of his failure criticizing the impugned order that it was passed without considering affidavits of assets and liabilities.

5. In the instant case, marriage is not disputed. It is also not disputed that the opposite party has been staying at her paternal home. The O.P. stated that the petitioner refused and neglected to maintain her and she was compelled to take shelter at her father's house along with her minor child.

6. It is also stated by the opposite party in her



application under Section 125 of the CrPC that the petitioner owns a jewellery shop and he has two other shops at Darbhanga. The witnesses on behalf of the opposite party, petitioner herein, on the other hand, stated in course of their evidence in the trial court that the petitioner works in the shop of his father. In the instant revision, the petitioner has changed his stand taken before the trial court that he is working in the shop of his father. On the contrary, the petitioner annexed two documents executed by one Ravi Shankar Sah, proprietor of M/s Radhika Jewellers, stating that the petitioner has been working in the workshop of his jewellery shop and earn Rs. 350/- per day. He also filed a certificate issued by the Mukhiya of Gram Panchayat, Nainaghat, Darbhanga. None of these documents were produced before the trial court during trial of the case, therefore, the revisional court does not have the jurisdiction to consider the said documents to come to an independent finding with regard to the income of the petitioner.

7. It is further found from paragraph no. 3 of the impugned judgment that the petitioner made out a case against the present opposite party, showing that she has been working in a private school. On the contrary, in the instant revision, it is stated by the petitioner in paragraph no. 6 of the application that



the opposite party earns approximately Rs. 15,000/- to 20,000/- per month by private tuition. Moreover, the parents of the opposite party have been working as Anganwadi Sevika and Asha Worker respectively, therefore, the opposite party has sufficient means to maintain herself and the paternal family of the opposite party has also sufficient means to maintain their daughter and daughter's son. No such case was made out by the opposite party in his rejoinder against the application under Section 125 of the CrPC. The statement made in paragraph no. 6 of the revisional application is subsequently created and an outcome of fertile brain of the petitioner to avoid payment of maintenance allowance.

8. Since the present petitioner failed to prove by leading satisfactory evidence that the opposite party has independent source of income to maintain herself and her minor son, no such statement is admissible in evidence.

9. I have carefully perused the impugned judgment, the petitioner is an able-bodied person capable to maintain his wife, it is the legal and moral responsibility of the petitioner to maintain his wife and minor son, considering the present day market price, rate of inflation and minimum need of the opposite party and her minor son. This Court is of the view that



the learned trial court rightly fixed the quantum of maintenance at the rate of Rs. 15,000/- per month.

10. For the reasons stated above, I do not find any reason to interfere with the impugned judgment. The revisional application is accordingly, dismissed on contest.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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