

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.738 of 2024

In
Miscellaneous Appeal No.42 of 2024

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

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1. Swati Suman, Wife of Pradeep Kumar Rai Presently Residing at Q.No. W-B/100, Near Gayatri Mandir, Gayatri colony, Kathara, Distt.- Bokaro, State of Jharkhand
 2. Pankhuri, D/O- Pradeep Kumar Rai A Minor under the guardianship of her mother Appellant No. 1), Presently Residing at Q.No. W-B/100, Near Gayatri Mandir, Gayatri colony, Kathara, Distt.- Bokaro, State of Jharkhand

... .. Petitioner/s

Versus

Pradeep Kumar Rai, Son of Din Bandhu Sharan Resident of Mohalla- New Professor Colony, Dinkar Nagar, Ward No. 16, O.P.- Ratanpur, P.S.- Begusarai Town, Distt.- Begusarai

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vivekanand Prasad Singh, Advocate
For the Respondent/s : Mr. Chandan Kumar Kashyap, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

- 4 25-06-2025 1. The petitioners are wife and minor daughter of the opposite party, respectively. The petitioners filed Maintenance Case No. 103 of 2021 before the learned Principal Judge, Family Court at Begusarai against the opposite party claiming maintenance allowance @ of Rs. 40,000/- per month, alleging, inter alia that marriage of the Petitioner No. 1 was solemnized with the opposite party on 3rd of February, 2013. The opposite party used to work as Senior Medical Representative in Pharmaceuticals Company under the name and style of LUPIN and earns 70,000/- per month. On the other hand, the Petitioner



No. 1 has no source of income. She has been driven away by the opposite party from her matrimonial home. She is not being maintained by her husband. It is not in dispute that in the wedlock between the Petitioner No. 1 and the opposite party, a girl child was born, who is aged about 13 years at present. She is a student.

2. Learned Advocate for the petitioners submits that impugned order is bereft of any reason. The learned Principal Judge, Family Court, Begusarai even did not consider the essential requirements or ingredients in order to come to a finding as to whether the petitioners are entitled to get any maintenance or not. The petitioners claimed maintenance at the rate of Rs. 40,000/- per month. The Trial Court without considering the income of the opposite party and the requirement of the petitioners granted maintenance at the rate of Rs. 3,000/- per month in favour of the Petitioner No. 1 and Rs. 2,000/- per month to Petitioner No. 2 during the period from 1st of September, 2021 to February, 2023. There is absolutely no reason as to why the maintenance allowance was granted only for 1 year and 6 months and not further.

3. Learned Advocate on behalf of the opposite party, on the other hand, submits that in February, 2023, the Petitioner



No. 1 got salary in DAV School, Bokaro and she used to get Rs. 18,000/- per month as her salary. Therefore, the Trial Court did not allow any maintenance allowance in favour of the petitioners after February, 2023, holding, inter alia, that the petitioners acquired sufficient means to maintain themselves by the salary earned by Petitioner No. 1.

4. It is also submitted by the learned Advocate for the opposite party that before filing of the instant maintenance proceeding, the opposite party filed a suit for divorce against the Petitioner No. 1, alleging, inter alia, that the Petitioner No. 1 lives an adulterous life. Sub-section 4 of Section 125 of the Cr.P.C. clearly states that no wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

5. It is contended by the learned Advocate for the opposite party that the Petitioner No. 1 is living separately due to her alleged adulterous life with another person who has been impleaded in the divorce suit also.

6. Surprisingly enough, no discussion has been made



in the impugned order with regard to non-entitlement of maintenance allowance by the wife as she is allegedly living in adultery. There is absolutely no evidence in this regard adduced by the opposite party.

7. Therefore, this Court is not in a position to accept such argument advanced by the learned Advocate for the opposite party, in absence of any proof of his allegation that the Petitioner No. 1 is not entitled to get any maintenance as she is living an adulterous life.

8. In the instant case, the learned Trial Judge fixed maintenance allowance in favour of the petitioners capriciously and whimsically. The learned Trial Judge did not come to a decision with regard to income of the opposite party on the date hearing of Maintenance Case No. 103 of 2021, which is an obligatory duty on the part of the learned Trial Judge.

9. In *Rajnish vs. Neha & Anr.* reported in **2021 2 SCC 324**, the Hon'ble Supreme Court made it obligatory to file affidavits of assets and liabilities by both the parties to enable the Court to consider the income, expenditure and other liabilities of the parties.

10. In *Aditi @ Mithi v. Jitesh Sharma* reported in **2023 SCC OnLine SC 1451**, the Hon'ble Supreme Court make



the direction of Rajnish vs. Neha (Supra) to be compulsorily followed and filed as per the Enclosure - I appended to the said judgement. The said guideline was passed in exercise of the powers of the Hon'ble Supreme Court under Article 136 read with Article 142 of the Constitution of India.

11. Therefore, compliance of filing disclosures statement by affidavit of assets and liabilities is obligatory to the parties.

12. In Paragraph-F of Affidavit of Assets and Liabilities for Non-Agrarian Deponents- Details Of Income Of The Deponent, the Petitioner No. 1 stated in respect of the question “ if engaged in the private section, furnish a certificate provided by the employer stating designation and gross monthly income of such persons, and Form 16 for the relevant period of current employment.” - any.

13. Thus, the Petitioner No. 1 denied any employment in DAV School, Bokaro.

14. Learned Trial Judge did not consider the affidavits of assets and liabilities in his impugned judgement at all.

15. The opposite party, on the other hand, did not file his Income Tax statement which he is required to file in reply to Column- F (5) Details Of Income Of The Deponent.



16. Thus, the Trial Court's judgement did not consider all such issues which are required to be dealt with in proceeding under Section 125 of the Cr.P.C.

17. The impugned order was passed without any logical basis and reasoning. Therefore, the impugned order is liable to be set aside.

18. Accordingly, the impugned order is set aside.

19. This is not the end of the story while this Court is of the opinion that Trial Court shall adjudicate the case of the parties afresh on the basis of evidence on record and affidavits of assets and liabilities, it is not unmindful to note that there may be separation between husband and wife but no law in the world codifies separation of child from the parents.

20. Therefore, being the father of Petitioner No. 2, the opposite party has legal and moral obligation to maintain the Petitioner No. 2, who has been residing with her mother and presently is aged about 13 years. She is student. She is entitled to be maintained by her father.

21. This Court assumes the status of a child whose father is a Senior Medical Representative and mother is a Graduate, this Court is not in a position to come to a conclusion as to whether the mother is also working or not.



22. Under such circumstances with regard to the maintenance of the Petitioner No. 2, this Court directs the opposite party to pay maintenance at the rate of Rs. 10,000/- per month to the Petitioner No. 2 within 7th of each succeeding month from the date of the filing of the application under Section 125 of the Cr.P.C. The arrears maintenance shall be paid by the opposite party along with the current maintenance in 12 monthly installment.

23. In view of the above order, the impugned order passed by learned Principal Judge, Family Court, Begusarai in Maintenance Case No. 103 of 2021 is dismissed.

24. Revisional application is partly allowed.

25. The matter be remanded back to Trial Court for fresh disposal of the application under Section 125 of the Cr.P.C. so far as it relates to payment of maintenance allowance in favour of the wife / Petitioner No. 1 on the basis of evidence on record and affidavits of assets and liabilities.

(Bibek Chaudhuri, J)

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