

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.640 of 2023

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

Shambhu Mahto S/O Babu Lal Mahto @ Late Bhola Mahto R/O Village-
Mathiya Rasulpur, Ps. Sanichari, Dist. West Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rajanti Devi W/O Shambhu Mahto, D/O Ramadhar Mahto R/O Village-
Mathiya Rasulpur, Ps. Sanichari, Dist. West Champaran, At Present Resident
Of Bhangaha Banwa Tola, Ps. Chanpatiya, Dist. West Champaran

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ram Kishun Prasad, Advocate
For the Respondent/s	:	Mr.Amitesh Kumar, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 23-07-2025 The instant revision is listed for hearing today.

2. It appears from the office note dated 23rd of April, 2025 that notice of the instant proceeding was validly served upon the Opposite Party No. 2 but she has not appeared.

3. Therefore, the instant revision is taken up for hearing *ex parte*.

4. The petitioner is husband of the Opposite Party No. 2. The Opposite Party No. 2 filed Maintenance Case No. 178 of 2013 against the petitioner praying for maintenance under Section 125 of the Cr.P.C. and the said case was disposed of by the learned Principal Judge, Family Court, West Champaran on 11th of July, 2023, directing the petitioner to pay maintenance at



the rate of Rs. 5,000/- per month in favour of the Opposite Party No. 2 and Rs. 2,000/- per month to her minor son, total being Rs. 7,000/- per month payable within 15 of each English calendar month from the date of filing of the application.

5. The petitioner has filed the instant revision challenging legality, validity and propriety of the said order mainly on the ground of his financial hardship. It is not disputed that the petitioner is the legally married husband of the Opposite Party No. 2 and in the wedlock between the petitioner and the Opposite Party No. 2, a male child was born, who is now aged about 10 / 12 years. It is also not disputed that the petitioner and the Opposite Party No. 2 do not reside together.

6. It is submitted by the learned Advocate for the petitioner that the wife of the petitioner occasionally comes to the house of the petitioner, stays there for few days and then goes away without any information or permission of the petitioner. The conduct of the wife of the petitioner is strange and curious because she does not permanently stay away from the petitioner.

7. Be that as it may, the primary contention of the petitioner is that he is a landless person. He does not have any job. He earns his livelihood as a daily wage labourer and it is



not financially possible for him to pay Rs. 7,000/- per month to his wife for her and her son's maintenance. The said fact was not denied by the Opposite Party No. 2. When there is no evidence on record as to the income of the petitioner, his income may be assessed on the basis of daily wages of an unskilled labourer under the Minimum Wages Act. It is not in dispute that the petitioner is an able-bodied person, capable to perform work. So petitioner's income under the Minimum Wages Act is assessed at Rs. 14,000/- per month. The Opposite Party No. 2 being the wife of the petitioner is entitled to get at least 25 per cent of the income in view of the ratio laid down in ***Kalyan Dey Chowdhury vs Rita Dey Chowdhury Nee*** reported in ***AIR 2017 SC 2383***.

8. Thus, the petitioner is under obligation to pay Rs. 4,000/- per month to his wife and Rs. 1,000/- per month to his minor son for their maintenance, total being Rs. 5,000/- per month. The amount of maintenance granted by the Trial Court is modified, directing the petitioner to pay a sum of Rs. 5,000/- towards maintenance of the Opposite Party No. 2 and her minor son from the date of filing of the application. The arrear maintenance shall be paid in 25 equal monthly installment along with the current maintenance within 10th of each succeeding



month.

9. With the above order, the order passed in Maintenance Case No. 178M of 2013 is modified and the revisional application allowed *ex parte*.

10. There shall be no order as to costs.

(Bibek Chaudhuri, J)

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