

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.851 of 2024

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

Md. Anwar Alam, Son of Shamsul Hoda @ Ghughali Mian @ Ghughani
Miyani, Village- Gadab Hauri (Gad Bahuri), Ps- Palanwa, Dist- East
Champaran

... .. Petitioner/s

Versus

1. Gudiya Khatoon, wife of Md. Anwar Alam, Village- Pakhanaha Bazaar
(jagiraha), Ps- Bairiya, Dist- west Champaran
2. Tabrej Alam, son of Md. Anwar Alam, Village- Pakhanaha Bazaar
(jagiraha), Ps- Bairiya, Dist- west Champaran

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Sanjeev Kumar, Advocate Mr.Sitesh Kashyap, Advocate Mr.Raushan Raj, Advocate
For the Respondent/s	:	Mr.Sunil Kumar No.III, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

- 4 28-07-2025 1. The instant criminal revision is directed against an order, dated 30th of July, 2024, passed by the learned Principal Judge, Family Court, West Champaran at Bettiah, in Maintenance Case No. 182 of 2019, directing the petitioner to pay maintenance allowance at the rate of Rs. 4,000/- per month to the Opposite Party No. 1 and Rs. 1,000/- per month to the minor son of the parties, total being Rs. 5,000/- per month from the date of filing of the application i.e., 31st of May, 2019.
2. The petitioner/husband has challenged the above-mentioned order in revision mainly on two folds.
3. It is submitted by the learned Advocate for the



petitioner with reference to paragraph 12 of the impugned judgement that the Trial Court held after analyzing the evidences and facts available on record that the petitioner is an illiterate person. He has mother, father and unmarried sister, who are dependent on him. The petitioner is a landless person. On the other hand, the Applicant No. 1 is a private nurse and she earns Rs. 20,000/- per month.

4. Thus, it is contended by the learned Advocate for the petitioner that when the opposite party has sufficient means to maintain herself and her son, the impugned order of maintenance allowance in favour of the Opposite Parties is harsh and liable to be set aside.

5. The learned Advocate for the petitioner practically misread the impugned judgement, especially, paragraph 12 of the judgement. Paragraph 12 of the judgment states the case made out by the present petitioner/husband.

6. The finding of the learned Trial Judge is recorded in paragraph 14. In paragraph 14, it is stated:-

“In the case at hand, the applicant no. 1 has not been able to establish the factum of fixed and accurate income of the opposite party Md. Anwar Alam by adducing any documentary evidence. The applicant no.1 has no source of income to maintain herself and her minor son. The opposite party Md.



Anwar Aalam is intentionally neglecting to maintain his wife and her minor son and the applicant no.1 Gudiya Khatoon is not able to maintain herself and her minor son namely Tabrej Alam. Being husband of the applicant no.1 and being father of his minor son, the opposite party Md. Anwar Alam is legally bound to maintain his wife and his minor son. As per settled law, the quantum of maintenance amount has to be awarded by the Magistrate/Family Court after taking into account the standard of living and status of the parties as well as financial position of the parties.”

7. In paragraph 13 of the impugned judgement, the Trial Court observed:-

“There is no doubt that the opposite party is a healthy and able-bodied young man and potentials an earning potential and as per settled law, if A man is healthy and able-bodied, he must be held to possess the means to support his wife, children and parents and he cannot be relieved of his obligation on the ground that he is a poor person and has no pleasant means. The word 'sufficient' should not be confined to the actual pecuniary resources but should have reference to the earning capacity and his capacity to work and earn is material.”

8. It is also found from the impugned order that from the evidence of one Md. Ijhar, O.P.W. 3, it reveals that the



opposite party has performed two marriages. A person who is claiming that he does not have sufficient means to maintain his first wife and minor child, married for the second time. This conduct shows that the opposite party is capable to earn adequate amount to maintain his first wife and child.

9. Learned Advocate for the petitioner has rightly pointed out, drawing reference to Annexure P4 and interim order in D.V Case No. 5 of 2023 between the parties on 13th of October 2023 passed by the learned Judicial Magistrate, 1st Class, by which the petitioner was directed to pay Rs. 2,000/- to complainant and Rs. 1,200/- to his son every month as interim maintenance under the protection of women against Domestic Violence Act within first five days of each succeeding month.

10. Referring to the paragraph 60 of ***Rajnish v Neha & Anr.*** reported in ***2021 2 SCC 324***, the learned Advocate for the petitioner submits:-

“It is well settled that a wife can make a claim for maintenance under different statutes. For instance, there is no bar to seek maintenance both under the D.V. Act and Section 125 of the Code of Criminal Procedure, or under H.M.A. It would, however, be inequitable to direct the husband to pay maintenance under each of the proceedings, independent of the relief granted in a previous



proceeding. If maintenance is awarded to the wife in a previously instituted proceeding, she is under a legal obligation to disclose the same in a subsequent proceeding for maintenance, which may be filed under another enactment. While deciding the quantum of maintenance in the subsequent proceeding, the civil court/family court shall take into account the maintenance awarded in any previously instituted proceeding, and determine the maintenance payable to the claimant.”

11. It is contended by the learned Advocate for the petitioner that the Trial Court did not consider the interim maintenance allowance directed by the learned Judicial Magistrate, 1st Class, West Champaran at Bettiah in D.V. Case No. 5 of 2023 while granting maintenance allowance under Section 125 of the Cr.P.C. in favour of the opposite parties.

12. In view of the above observation made by the Apex Court in ***Rajnish v. Neha***, the petitioner is is entitled to get an adjustment of the amount passed by way of interim maintenance in the D.V. Case No. 5 of 2023.

13. Therefore, the instant revision is disposed of directing the petitioner to pay the maintenance allowance as directed by the learned Principal Judge, Family Court, West Champaran at Bettiah in Maintenance Case No. 182 of 2019 and on payment of such maintenance allowance, he is not under



obligation to pay the maintenance allowance passed in D.V. Case No. 5 of 2023. The said amount will automatically be adjusted with the amount of maintenance allowance passed by the learned Principal Judge, Family Court, West Champaran at Bettiah.

(Bibek Chaudhuri, J)

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