

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.804 of 2023

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

Kamal Kumar Son of Ramashankar Das Resident of Village- Redma Kumhar Toli, Daltonganj P.O. and P.S.- Daltonganj, District- Palamu (Jharkhand)

... .. Petitioner/s

Versus

1. The State of Bihar
2. Bajrangi Devi Wife of Kamal Kumar At present Resident of Village - Daudnagar Daghar Toli Ward No. 16, P.O. and P.s.- Daudnagar, District- Aurangabad (Bihar).
3. Jyoti Kumari Son of Kamal Kumar and bajrangi Devi At present Resident of Village - Daudnagar Daghar Toli Ward No. 16, P.O. and P.s.- Daudnagar, District- Aurangabad (Bihar).
4. Golu Kumar son of Kamal Kumar and Bajrangi Devi At present Resident of Village - Daudnagar Daghar Toli Ward No. 16, P.O. and P.s.- Daudnagar, District- Aurangabad (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shailesh Kumar Singh, Advocate
For the Opposite party	:	Mr. Santosh Chandra Bhaskar, Advocate
For the Respondent/s	:	Mr. Pushpa Sinha, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

8 17-04-2025 The instant criminal revision is directed against an order dated 27th September 2023 passed by the learned Principal Judge, Family Court, Aurangabad in Maintenance Case No. 79/2017 filed by the O.P. Nos. 2 to 4, whereby and whereunder, the petitioner was directed to pay maintenance at the rate of Rs. 6,000/- to the O.P. Nos. 2 to 4 with effect from the date of filing of the application, i.e., 22nd June 2017 under Section 125 of the CrPC.

2. The said order was challenged by the petitioner on



the following grounds:-

(i) the O.P. No. 2, on her own accord, left the association of the petitioner and has been staying at her matrimonial home along with two children who were born in the wedlock between the petitioner and the O.P. No. 2.

(ii) The O.P. No. 2 has own source of income. She earns Rs. 4,000/- per month by working as a tailor.

(iii) the O.P. No. 2 has been residing at her matrimonial home since 2017 and in the year 2021, she gave birth to third child as a result of co-habitation with some third-party. Thus, it is contended by the petitioner that the O.P. No. 2 is not entitled to get any maintenance as per the provision contained in Section 125(4) of the CrPC.

3. I have perused the impugned judgment passed by the learned Principal Judge, Family Court, Aurangabad. In paragraph 21 of the impugned judgment, it is rightly observed by the learned Principal Judge as hereunder:-

“ Though in this case, the paternity of the third child has been disputed by the opposite party, however, he failed to show any material to prove that he had no access to the petitioner no. 1 as required under Section 112 of the Indian Evidence Act. Section 112 of the Indian Evidence Act provides



that if the child is born during the continuance of valid marriage between his mother and any man, it shall be conclusive proof that he is the legitimate son of that man. Considering the provision of Section 112 of the Indian Evidence Act, it is clear that Krishna Kumar, though has not been added as petitioner in the present case, is also entitled to get maintenance from his father.

4. Sub-Section (5) of Section 125 of CrPC states that on proof that any wife, in whose favour an order has been made under Section 125, is living in adultery or without any sufficient reason, she refuses to live with her husband or that they are living separately with mutual consent, the Magistrate can cancel the order.

5. Plain reading of the above provisions shows that the adultery against the married wife cannot only be pleaded or alleged, it is to be proved by the petitioner. The petitioner failed to produce any evidence in support of his allegation.

6. The learned Advocate appearing on behalf of the petitioner submits that the petitioner filed a suit for restitution of conjugal rights and the said suit was decreed. However, the opposite party no. 2 refuses to come back and stay with the petitioner as husband and wife. A decree for restitution of



conjugal rights does not dis-entitled the wife/OP from maintenance specially when an unfounded allegation is made against her that she leads an adulteress life.

7. For the reasons stated above, I do not find any ground to interfere against the impugned order passed by learned Principal judge, Family Court at Aurangabad. Accordingly, the instant revision is dismissed on contest.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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