

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1013 of 2024

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

=====

Md. Saddam Hussain @ Saddam Husain @ Saddam Hussain, Son of Salahuddin Ansari, Resident of village- Kara, P.O.- Kara, PS-Obra, District- Aurangabad, Bihar

... .. Petitioner/s

Versus

Shaesta Bano @ Sahista Bano, Wife of Md. Saddam Hussain, Daughter of Abdul Aziz At present Resident of village- Mominpur, P.o. Dewaria, kala P.S.- Obra, District- Aurangabad Bihar and resident of village and PO- Kara, PS- Obra, District- Aurangabad, Bihar

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Yugal Kishore, Advocate Mrs.Rupa Kumari, Advocate
For the Respondent/s	:	Mr.Anirudh Kumar Verma, Advocate Mr.Vyas Kumar Mishra, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 30-07-2025 The instant revision challenges an order dated 8th of August, 2024 passed in Maintenance Case No. 145 of 2021 being a proceeding 125 Cr.P.C. by the learned Principal Judge, Family Court, Aurangabad directing the present petitioner to pay maintenance at the rate of Rs. 7,000/- per month to the opposite party from the date of filing of the petition i.e., on 20th of September, 2021. The said order is under challenge in the instant revision on the grounds:-

2. The petitioner is a fruit seller and he does not have sufficient income to pay maintenance at the rate of Rs. 7,000/- per month to the opposite party.



3. Secondly, during the trial of the above-mentioned maintenance case, petitioner expressed that he was ready and willing to keep his wife in his house and maintain her with full dignity and honour but the opposite party / wife was not agreeable to her proposal. Therefore, the opposite party is not entitled to get any maintenance because without sufficient any cause she left the association of the petitioner.

4. It is further stated by the petitioner that earns Rs. Rs. 3,000/- per month by selling fruits on a *Thela* by the side of the road.

5. Therefore, without considering the income of the petitioner, the Trial Court passed an order of maintenance at the rate of Rs. 7,000/- per month.

6. The learned Advocate on behalf of the opposite party, on the other hand, submits that indisputably the petitioner is a fruit seller. The opposite party is not in a position to file any document in respect of the income of the petitioner because of the fact that a fruit seller does not have any paper relating to his income per month. It is submitted by the learned Advocate for the opposite party that being the wife, the opposite party has special knowledge that the petitioner earns Rs. 20,000/- - Rs. 25,000/- per month by selling fruits. Nowadays the business of



selling fruit is a lucrative source of income and the Trial Court assessed his income as Rs. 20,000/- per month and accordingly directed him to pay maintenance allowance to his wife at the rate of Rs. 7,000/- per month. The said amount is not at all excessive. Therefore, there is no reason for interference against the order passed by the Trial Court.

7. Having heard the learned Counsels for the parties and on careful perusal of the materials on record, this Court is of the view that admittedly the petitioner is an able-bodied man, capable of performing work. He earns his livelihood by selling fruit. It is decided in plethora of judgement by the Apex Court as well as the higher Courts that it is not the actual income but the capacity of the husband to income is the prime consideration while granting maintenance allowance in favour of the wife. It is not disputed that the petitioner has to earn money by selling fruits. The Trial Court granted a sum of Rs. 7,000/- per month to the wife. Rs. 7,000/- per month today is absolutely a meager amount for maintenance of a person. More than Rs. 3,000/- is spent per month for one person for having absolutely frugal meal twice today. Thereafter, there are expenditure for clothing, medicine and other bare requirements of life of the opposite party.



8. Considering such aspect of the matter, this Court finds that the amount of maintenance of Rs. 7,000/- per month is not at all excessive and the petitioner has the capacity to pay the said amount.

9. For the reasons stated above, I do not find any merit in the instant revision and accordingly, the instant revision is dismissed on contest.

10. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

uttam/-

U			
---	--	--	--

