

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.7 of 2024

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

Nahid Anjum W/O Md. Sahab Alam d/o- Md. ABUL KHAIR R/O-
sarfuddinpur, P.S.- Bihta, Distt.- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Md. Sahab Alam S/O- Noorshid Alam R/O- Mohalla- Boro Airport Road.
P.O. Pachmba, P.S.- Giridih Town District- Giridih (Jharkhand)

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Deovind Kumar Singh, Advocate Mr. Utpal Kant, Advocate
For the Respondent/s	:	Dr. Mrityunjaya Kr. Gautam, Advocate
For the O.P. No. 2	:	Mr. Mohammad Sufiyan, Advocate Mr. Pratyush, Advocate Ms. Tooba Hera, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

7 28-04-2025 This is an application under Section 19(4) of the Family Courts Act, 1984 challenging legality, validity and correctness of impugned order passed in Maintenance Case No.1867(M)/2014 by the learned Additional Principal Judge, Family Court at Patna on 18.09.2023 on an application under Section 125 of the Cr.P.C. directing the opposite party/husband to pay maintenance at the rate of Rs.13,000/- per month to the petitioner and Rs.5,000/- per month for their minor girl child, who is now a student of Class-V, total being Rs.18,000/- per month.

2. Though, the observation made herein-below has become cliché due to repeated use by the Apex Court as well as



different High Courts, at the risk of repetition I would like to record that a legally married wife is entitled to get his maintenance if – (i) her husband has refused and neglected to maintain her (ii) inspite of his sufficient means, and (iii) the married wife does not have any means to maintain herself.

3. The statute also provides that if the wife voluntarily and on her own accord leaves the association of her husband and does not want to stay with him, she is not entitled to get any maintenance.

4. In the instant case, indisputably, the petitioner was legally married wife, since divorced and her marriage with opposite party No.2 was solemnized on 01.04.2013. In the said wedlock with the opposite party no.2, the petitioner gave birth to a female child, who is now a student of Class-V.

5. It is alleged by the petitioner that after few days of her marriage, the opposite party no.2 was tortured on demand of dowry, in the meantime, she became pregnant, during her pregnancy also she was tortured, humiliated and harassed by the opposite party No.2, so his brother was compelled to take her to her paternal home, where she gave birth to a female child.

6. It is submitted by the learned Advocate on behalf of the petitioner that the opposite party No.2 used to abuse him



doubting illicit relationship of the petitioner with her brother-in-law.

7. The learned Advocate of the opposite party No.2 has not made any counter argument against such allegation. In this regard, this Court is of the view that chastity of a lady is the most precious possession and if someone hearts a married lady questioning her chastity, she has every right to dissociate even her husband. Such disassociation cannot be said to be voluntarily leaving the association of the husband.

8. There is no aspect of the matter, the opposite party No.2 obtained an order of divorce against the petitioner. After obtaining an ex-parte decree of divorce, he performed a second marriage. The second wife of the opposite party No.2 according to the learned Advocate for the petitioner, is a teacher, she has her own source of income. Therefore, the opposite party No.2 is not obliged to maintain his second wife, but he is under obligation to maintain his first wife, as after divorce she did not perform any marriage with another person.

9. The petitioner has filed the instant revision challenging the quantum of maintenance.

10. It is submitted by the learned Advocate for the petitioner that the opposite party No.2 is a Senior Manager of



Canara Bank. From the salary slip of the opposite party No.2 in the month of March, 2023, this Court finds gross salary of the opposite party No.2 was Rs.1,19,971.71/-. Therefore, it is contended on behalf of the petitioner that the petitioner and her minor daughter is entitled to leave a dignified life according to their status and standing in the society being ex-wife of a Senior Manager of a nationalized bank. Under such circumstances, a sum of Rs.18,000/- per month is too meager to sustain.

11. The learned Advocate on behalf of the opposite party No.2, on the other hand, submits with reference to Page-15 & 16 of the counter affidavit that the petitioner did not contest the suit for divorce inspite of having sufficient opportunities and therefore, ex-parte decree for divorce was passed. Subsequently, the opposite party No.2 contracted a second marriage.

12. In a proceeding under Section 125 of the Cr.P.C. it is not material as to how the decree for divorce was obtained by the opposite party No.2/husband. A decree for divorce was passed by a competent Civil Court and this Court exercising criminal revisional jurisdiction is bound by the said decree for divorce.

13. It is not disputed that the opposite party No.2 has



married for the second time. He has three children from her second marriage. He is under obligation to maintain his second wife and three children. From the salary slip for the month of March, 2023 it is found that though the gross salary of the opposite party No.2 was Rs.1,19,971.71/- his net income is Rs.48,296.38/-.

14. Considering his net income, it is urged by the learned Advocate for the opposite party No.2 that the amount of maintenance granted in favour of the petitioner is more than 25% of net income of the opposite party No.2, so the petitioner is not entitled to get any enhancement of the amount.

15. From this document, the Court can assess net income of the opposite party No.2 per annum.

16. In the salary slip it is projected income for the financial year 2022-23 was recorded as Rs.16,24,617.89/-. Projected TDS on taxable income was Rs.2,43,701/-. After deducting tax from the source the income of the opposite party No.2 per annum comes to Rs.13,80,916.89/-. He deducts contributory pension at the rate of Rs.10135.29/-. He used to deduct contributory pension at the rate of Rs.10135.29/- some total of the said contributory pension comes to Rs.1,21,620/-. Thus, yearly net income of the opposite party No.2 was



Rs.12,59,296/-. Thus, monthly average income of the opposite party No.2 comes to Rs.1,04,941.33/- per month.

17. I have come to this conclusion from the document of the opposite party No.2 himself annexed at Page-23 of the counter affidavit.

18. It is urged by the learned Advocate for the opposite party No.2 that the father of the petitioner was a government employee, he used to earn pension after his death, the mother of the petitioner gets family pension. Moreover, both the parents of the petitioner has huge amount of landed property in all probability, the petitioner would inherit the said properties after the death of her mother. Moreover, petitioner is a well educated lady. She earns handsome amount by way of private tuition.

19. In support of his contention, however, the opposite party No.2 could not produce certain land records. The future uncertain income after being inherited in respect of the landed property cannot be taken into consideration to fix the maintenance allowance. It may so happened that the mother of the petitioner in future transferred her property to a third person or some unforcive incident may occur, which dis-entitled the petitioner from earning money from agricultural land on her



own. Therefore, at this stage, the petitioner is entitled to get maintenance allowance from the opposite party No.2.

20. With regard to quantum of maintenance, this Court only refers to a decision of the Hon'ble Supreme Court in the case of *Kalyan Dey Chowdhury vs Rita Dey Chowdhury Nee Nandy* passed in Civil Appeal No.5369 of 2017 on 19.04.2017.

21. With regard to the quantum of maintenance, the Hon'ble Supreme Court held as follows :-

“[Following Dr. Kulbhushan Kumar vs. Raj Kumari and Anr. \(1970\)](#) 3 SCC 129, in this case, it was held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent-wife.”

22. For the reasons stated above, the petitioner for self and for her minor daughter is entitled to get Rs.26,235.33/- per month (25% of Rs.1,04,941.33/-).

23. In view of the above order, the quantum of maintenance passed by the learned Trial Court is modified and the instant criminal revision is thus disposed of.

(Bibek Chaudhuri, J)

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