

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.257 of 2024

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Bharat Mani son of Uday Kumar @ Uday Kumar Mishra Resident of Village-
Birpur Ward No-1, PS- Birpur Dist- Supaul P/A- Gali No-10, Lajwanti
Garden, Nangal Raya, South West Delhi

... .. Petitioner/s

Versus

Khusboo Kumari @ Ruby Kumari wife of Bharat Mani, D/o- Raj Kumar Jha
Resident of Village- Kamalapur PS- kunauli Dist- Supaul

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Alok Kumar Choudhary, Sr. Advocate Mr. Kulanand Jha, Advocate
For the Opposite Party	:	Mr. Amrit Abhijat, Advocate Ms. Shubhra, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 06-04-2026

The instant revision petition has been preferred for setting aside the judgment and order dated 08.01.2024 passed in Maintenance Case No. 60 of 2016 by the learned Principal Judge, Family Court, Supaul, whereby and whereunder the learned Principal Jude ordered the petitioner to pay maintenance amount of Rs.10,000/- per month to his wife, opposite party Khusboo Kumari @ Ruby Kumari, from the date of filing of the case, i.e., 04.06.2016.

02. Brief facts of the case, as culled out from the material placed on record, are that the opposite party filed a case



under Section 125 of the Code of Criminal Procedure in the court of learned Principal Judge, Family Court, Supaul on 04.06.2016 and said case was numbered as Maintenance Case No. 60 of 2016. The marriage of applicant/opposite party was solemnized with the present petitioner on 05.02.2014 at her ancestral home and in the marriage, a number of articles were given to the petitioner apart from cash amount of Rs.23,50,000/- for purchasing a vehicle.

03. The applicant/opposite party claimed that the petitioner has been employed as Marketing Officer in Cipla Limited Company at New Delhi having salary of Rs.1,00,000/- per month while the father of the petitioner has been doing business as contractor with permanent residence at Birpur, Ward No. 1. Further case of the applicant/opposite party was that the family members of the petitioner started pressurizing her father for giving Rs.50,00,000/- for purchase of a house in Delhi and when he could not meet this demand, the applicant/opposite party was subjected to torture. The petitioner retained her jewellery and she was brought to her parental home by the petitioner who is not ready to keep her in his home. The applicant/opposite party has been doing B.Ed. course and she claimed her monthly expenses to be Rs.35,000/- but she has no



independent source of income. She further claimed that she has filed cases against the petitioner and her family members and she has to bear expenses to the tune of Rs.15,000/- per month in attending these cases. The applicant/opposite party prayed for maintenance of Rs.50,000/- per month from the petitioner.

04. The petitioner appeared as opposite party in the maintenance case and submitted that the averment made in the maintenance petition is partly correct and partly false. The petitioner admitted applicant/opposite party to be his wife but denied that any jewellery articles were given to him or cash of Rs.23,50,000/- was given to the petitioner for purchase of vehicle. The petitioner claimed that the marriage was solemnized with mutual consent of the two families without any dowry being given or demanded. The petitioner further claimed that he has been doing an ordinary job in Cipla Limited Company, New Delhi and he somehow manages to maintain himself and his family. The petitioner further submitted that the applicant/opposite party never stayed with him after the marriage and never accepted the petitioner as her husband, mentally or emotionally. The applicant/opposite party is a quarrelsome lady, who, at the instigation of her father and



family members, never became ready to stay in her matrimonial home. She did not allow the petitioner to make any physical relationship with her and threatened him that if he would touch her, she would commit suicide. The petitioner further claimed in his written statement that the applicant/opposite party is a lady of modern tastes and wanted to lead an independent life. Once she left her matrimonial home on 02.07.2014 she never returned. She has been illicit premarital relationship with one Washid Ahmad and this fact was brought to the notice of the learned trial court by filing an application. The petitioner has further submitted that as no physical relationship was established between the petitioner and the applicant/opposite party due to the independent thoughts of the applicant/opposite party and her premarital illicit relationship, the petitioner was compelled to file a case for dissolution of marriage before the court of Principal Judge, Family Court, Gurgaon vide Matrimonial Dissolution Case No. 88 of 2016. After getting the notice of the said divorce case, the applicant/opposite party filed a complaint case bearing Complaint Case No. 134C of 2016 in the court of learned ACJM, Birpur on false, fabricated and baseless allegations in order to pressurize the petitioner.



05. The petitioner denied all the averments made by the applicant/opposite party regarding his income and the grounds taken by the applicant/opposite party regarding claim of the maintenance amount.

06. The learned Principal Judge after consideration of the evidence adduced by both sides, vide order dated 08.01.2024, allowed the maintenance petition of the applicant/opposite party partly on contest ordering the petitioner to pay the maintenance amount of Rs.10,000/- per month to the applicant/opposite party from the date of filing of the maintenance petition. The learned trial court further ordered that the arrears of maintenance amount since 04.06.2016 shall be paid by the petitioner to the opposite party within six months in six equal installments. This amount was made further subject to adjustment of the amount paid by the petitioner to the applicant/opposite party as maintenance in any other proceeding/case. Aggrieved by the order of learned Principal Judge, Family Court, Supaul, the petitioner has preferred the instant instant revision petition.

07. The learned senior counsel appearing on behalf of the petitioner submitted that the impugned order is not sustainable as it suffers from illegality, irregularity and



impropriety. The impugned order has been passed on erroneous consideration and the same is not tenable on facts or law. Learned senior counsel further submitted that the learned Principal Judge has erred in not appreciating the vital facts that the marriage of the parties has not been consummated and it is a voidable marriage in the eyes of law. The learned Principal Judge completely failed to appreciate the vital fact that the opposite party has not been ready to live with the petitioner. She has been living separately from the petitioner since 2014. The learned Principal Judge has also not considered this fact that opposite party has solemnized marriage with one Washid Ahmad and she was having an extra marital relationship with the said persons and both of them have been living together. The learned trial court has also failed to consider that the applicant/opposite party has deserted her husband and failed to fulfill her matrimonial obligation and thus inflicted mental cruelty upon the petitioner. The learned trial court has also not considered that the applicant/opposite party was having an affair with the said person prior to her marriage with the petitioner. This fact was brought to the notice of the learned trial court on 30.10.2023 but the said fact has not been taken into consideration and an erroneous order has been passed by the



learned trial court. The learned senior counsel further submitted that as the applicant/opposite party has been living in adultery, the petitioner is not bound to maintain her. The learned senior counsel further submitted that the applicant/opposite party has herself deserted the petitioner and under the provisions of the law, she cannot claim maintenance from the petitioner under Section 125(4) of the Code of Criminal Procedure. Learned senior counsel also submitted that the learned trial court has not taken into consideration the income and liability of the petitioner while allowing the maintenance amount of Rs.10,000/- per month to the applicant/opposite party. The petitioner has filed his affidavit of his assets and liabilities and in the said affidavit the petitioner has specifically averred that his monthly expenses are Rs.49,500/- which includes the rent and expenses of his dependent old aged parents. The petitioner has brought on record his salary slip of September, 2023 issued by the Cipla Company and it shows his salary to be Rs. 52,000/- per month. Therefore, the petitioner is not in a position to make any payment to the applicant/opposite party. The learned senior counsel referred to the case of ***Rajnesh Vs. Neha & Another, (2021) 2 SCC 324*** in support of his contention and submitted that the applicant/opposite party has not disclosed her true



income and has made wrong averment of any income of her. She has also not disclosed about the income of her parents as she has been getting decent amount from her parents for her maintenance. Moreover, the applicant/opposite party is a working lady and she has been earning an income of Rs.25,000/- which includes tuition fee and income from running a beauty parlour. The learned senior counsel further submitted that the applicant/opposite party is the only child of her parents and she receives rental income from the property of her parents whereas the petitioner has got no such property. However, the learned trial court did not appreciate all these facts. The learned senior counsel also submitted that the petitioner is also ready for onetime settlement. Thus, learned senior counsel submitted that the impugned order of maintenance dated 08.01.2024 passed against the petitioner is not sustainable and the same be set aside.

08. The learned counsel appearing on behalf of the opposite party vehemently contended that there is no merit in the present revision petition and the same be dismissed with cost. The learned counsel further submitted that the impugned order is proper and valid and the same has been passed by the learned Principal Judge after due consideration of all the



material available before him. Therefore, there is no infirmity in the said order. Moreover, the petitioner has failed to show any illegality, irregularity or impropriety in the impugned order and unless any such thing is brought to the notice of the court, this Court could not interfere with the impugned order. The learned counsel further submitted that unless some illegality is shown in the impugned order, for mere challenge to the factual aspects of the matter, the revision petition is not maintainable.

09. The learned counsel further submitted that the applicant/opposite party has been ousted from her matrimonial home on account of demand of Rs.50,00,000/- by the petitioner for purchasing a flat in Delhi and the matrimonial life of the opposite party has been ruined on account of this demand. It is not correct to say that after getting the notice in Marriage Dissolution Case No. 88 of 2016, the opposite party filed a criminal case against the petitioner and his family members. Rather it was the petitioner who filed the case for dissolution of marriage before a court in Gurgaon only with an oblique motive of harassing the opposite party and expelling her from her matrimonial home. The opposite party did not file any case earlier and her father, being a respectable person of the society,



tried to reconcile the matter. But the petitioner, taking advantage of the said fact, filed Divorce Case No. 88 of 2016 in Gurgaon which shows the malicious nature of the petitioner. The learned counsel further submitted that the petitioner appears to be a person of perverted mind. He levelled allegation against his wife for having been in extra marital relationship. However, when the petitioner and his witnesses were being examined in maintenance case, neither the petitioner nor the other witnesses stated anything about the love affair of applicant/opposite party with some other person. The learned Principal Judge has taken note of this fact and categorically mentioned that the petitioner as OPW No. 3 and his father as OPW No. 2 in their cross-examination stated that they could not tell the name of person with whom the applicant/opposite party has got illicit relationship. The learned Family Court has also observed that the opposite party has not produced any evidence in support of his contention of illicit relationship of the opposite party and she was not living with the petitioner. The learned counsel thus submitted that it was the petitioner who ousted the opposite party from her matrimonial home on account of non-fulfillment of his demand of Rs.50,00,000/-. Therefore, the opposite party has been living away from the petitioner and there is sufficient



reason behind it. The learned counsel further submitted that there is no merit in the allegation that the marriage was not consummated between the petitioner and the opposite party. The opposite party has resided in her matrimonial home for almost two years where the petitioner used to come from Delhi but the opposite party was being treated as maidservant in her matrimonial home by her in-laws. Even then the opposite party was always ready to go with her husband but the petitioner took her with him only in order to secure bail for himself but was never willing to take her back to her matrimonial home in order to restore the relationship.

10. The learned counsel further submitted that the petitioner has not been making payment of any farthing to the opposite party in terms of the impugned order and reiterated that there is no infirmity in the impugned order except the quantum of maintenance has been fixed at the lower side even considering the income of the petitioner to be Rs.54,349/- per month as per his admission. So the maintenance amount could not be less than Rs.18,000/- per month.

11. The learned counsel appearing on behalf of opposite party also relied on **Rajnish** (*supra*) submitting that the salary slip of the petitioner has been placed on record along



with the disclosure of assets and liabilities by way of affidavit and the learned trial court did not follow the law laid down in ***Rajnesh*** (*supra*) in true spirit and awarded only a meager sum towards maintenance of the opposite party. The learned counsel also referred to the case of ***Manish Jain Vs. Akanksha Jain***, ***AIR 2017 SC 1640***, wherein the Hon'ble Supreme Court held that it is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife's parents is also immaterial. Therefore, the Court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support.

12. I have given my thoughtful consideration to the rival submission of the parties and perused the record. The opposition to the order of maintenance awarded in favour of opposite party is mainly on the ground that the opposite party deserted the petitioner and has been refusing to stay in his company. Further challenge to the order of learned Principal Judge is on the ground that the marriage was never consummated as the opposite party refused to establish physical relationship with the petitioner. The order of the learned



Principal Judge has also been challenged on the ground that the opposite party has been living in adultery as she was having premarital illicit relationship with some person and continued that relationship even after her marriage. There is also challenge to the quantum of maintenance amount on the ground of income and expenses of the petitioner.

13. From perusal of the record, I find that all the grounds have been agitated by the petitioner before the learned Principal Judge, Family Court, Supaul. However, the learned trial court considered all the grounds and did not find merit in the contention of the petitioner. The learned trial court disbelieved the allegation of adultery. Moreover, this claim of the petitioner regarding adultery is yet to be proved in the matrimonial proceeding instituted by the petitioner for use as a defence to deny maintenance to the opposite party. The learned trial court considered the material and evidence before it and gave a negative finding on this aspect of the matter which cannot be faulted. Similarly, whether desertion is justifiable or not, the petitioner was required to prove this fact by leading cogent evidence. But the petitioner failed in his duty cast upon him. The learned trial court has also discussed this issue at length and recorded its finding in favour of opposite party. It is



trite law that the revisional court would not go into re-appreciation of facts to take a different view than the trial court. Therefore, on contentious factual aspect the court would accept the finding of the learned trial court as there appear to manifest error of perversity.

14. So far as the claim of the petitioner regarding consummation of marriage is concerned, it has been denied by the opposite party and it has not been substantiated by the petitioner. In any case, this defence could not have any bearing on the award or refusal of maintenance to the opposite party.

15. On the point of challenge to the quantum of maintenance amount, I do not find any infirmity in the order of learned trial court. The learned trial court took into consideration the affidavit filed by the parties regarding their assets and liability and also the evidence adduced in this regard before the court. Admittedly, the petitioner had been working in a private company and has brought on record the document regarding his income and the learned Family Court accepted the documents of the petitioner and held the income of the petitioner to be around Rs.54,000/-. Therefore, the award of Rs.10,000/- to the opposite party could not be said to be



excessive. It has been contended on behalf of the petitioner that the parents of the opposite party and the opposite party herself are having handsome income. The claim of the petitioner about the income of the opposite party and also opposite party earning handsome sum by giving tuition and running a beauty parlour has not been proved though onus was on the petitioner to prove the income of the opposite party. On the other hand, the income of the parents of the opposite party is immaterial for the purpose of grant of maintenance to the opposite party. If the applicant/opposite party is not having any independent income to maintain herself, the petitioner being her husband is duty bound to maintain her and the law mandates for grant of maintenance amount so that the wife does not fall into destitution or vagrancy.

16. It is also pertinent to take note of the fact that the petitioner has failed to show any material irregularity or illegality in the impugned order. At the same time, this Court would like to reiterate that under its revisional jurisdiction, is not supposed to reappraise the facts, already considered by the learned trial court, to record a different finding. In revisional jurisdiction, this Court could not act as an appellate court and could not sit over the judgment of the learned Family Court



taking a different view.

17. In the light of the aforesaid discussion, I do not find any merit in the instant revision petition and hence, the same is dismissed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
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