

(2022) 07 PAT CK 0015

Patna High Court

Case No: Criminal Revision No. 702 Of 2018

Onkar Nath Sharma

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: July 6, 2022

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 125

Hon'ble Judges: Rajeev Ranjan Prasad, J

Bench: Single Bench

Advocate: Akhileshwar Dayal

Final Decision: Dismissed

Judgement

Despite waiting for some time no one has turned up on behalf of the petitioner. On 01.07.2022 when the matter was taken up for consideration a prayer for pass over was made on behalf of the petitioner which was granted by this court. Again on 05.07.2022 the matter was passed over as no one appeared on call on behalf of the petitioner. This court is, therefore reasons to believe that despite knowledge of the listing of the matter attempts are being taken to somehow drag the case. Since this is a case of the year 2018, this Court deems it fit and proper to consider this application on the basis of the materials available on the record.

The revision application is directed against the order dated 08.03.2018 passed by learned Principal Judge, Family Court, Chapra (Saran) in

Maintenance Case No. 88(M) of 2012 by which the learned court was pleased to allow the Maintenance application dated 04.07.2012 filed by the

O.P. No. 2 & 3 Smt. Sheela Sharma and Ayush Kumar @ Om against their husband and father (this petitioner) under section 125 Cr.P.C. for grant of maintenance allowance.

It appears on perusal of the impugned judgment that the marriage between the petitioner and the applicant -wife is not in dispute. The petitioner and the applicant- wife had a son out of their wedlock. At the time when the application for maintenance was being considered by the learned Principal

Judge, Family Court the son was minor aged about six years only. The applicant " wife in support of her claim adduced evidences. She examined

herself as P.W.1 and to support her case three other witnesses namely, Champa Devi (P.W.2), Lagandeo Sharma (P.W.3) and Rajendra Sharma

(P.W.4) were examined. On her behalf certificate issued by the Mukhiya of the Gram Panchayat Raj, Daudpur saying that the applicant " wife is

unemployed has been proved as Exhibit ~1™. She has proved the medical certificate of her minor son and the receipts of the tuition fee of the

said minor son as Exhibit ~2™ and Exhibit ~3™ to ~3/7™ respectively.

On behalf of the husband " opposite party three witnesses were examined. He examined himself as O.P.W.1. Two other witnesses namely,

Safayat Ali and Sirajuddin Ansari have been examined as O.P.W.2 and O.P.W.3 respectively. On his behalf a visiting card of sewing centre and a

receipt of sewing centre have been brought on record as Exhibit ~A™ and Exhibit ~A/1™ respectively. O.P. No. 1 has brought on record

the certified copies of order-sheets of maintenance case no. 88/2012 and certified copy of order dated 24.08.2012 of Case No. 140/2012. He has also

exhibited certified copy of order-sheets and the certified copy of judgment dated 16.02.2013 of Matrimonial Case No. 1078/2009.

Learned Principal Judge, Family Court has examined the evidences on the record. P.W.1 has come out with a case that her marriage was performed

with the opposite party on 20.05.2004 and presently she is living in her paternal home along with her minor son. It is her case that after her marriage

she went to her in-laws place but there was a demand of dowry and on non-fulfillment of the said demand she was tortured by the opposite party and

his family members and later on she was ousted from the matrimonial house after depriving of her valuable ornaments and cloths in the month of

October 2009. She has deposed that she had filed a criminal case against her husband but in the said case the husband agreed to keep the applicant

â€" wife with full dignity and a compromise was filed. Based on that compromise the criminal case was dropped and being emboldened by that the

husband left the applicant â€" wife and her son in her paternal home and did not become ready to maintain their livelihood. She has stated that she is a

Pardanasin lady and is unemployed whereas the opposite party is a government teacher in ITI College, Bathua, P.S. - Mirjapur, District â€" Mirjapur

(U.P.), and he has been getting salary of Rs. 50,000/- per month, he has other source of income in form of agriculture proceeds from which he earns

at least a sum of Rs. 50,000/- per annum.

The learned Principal Judge has while examining the evidence of the husband â€" opposite party noticed that he took a plea that his salary is Rs.

18,400/- per month and admitted that he had performed a second marriage after obtaining a decree of divorce from the applicant â€" wife and has

been living in a rental house at Mirjapur. Although he claimed that the wife is earning Rs. 20,000/- to Rs. 30,000/- per month but the learned Family

Judge was not convinced with the kind of materials brought on record by O.P. No. 1 to show that his wife was running a sewing centre. It was found

that the opposite party had filed a divorce case in which an ex parte decree of divorce has been obtained and the said order has been challenged

before the Honâ€™ble High Court at Allahabad. In the later part of the order, it has come that the opposite party has admitted his salary of Rs.

32,000/- per month. The other two witnesses brought by the O.P. No. 1 have also failed to give any evidence on the point of employment of the wife

of the petitioner.

To assail the impugned judgment the petitioner raised certain grounds. Most of the grounds are only ornamental in nature. The main ground taken to

assail the impugned judgment is that the wife of the husband was herself unwilling to live with the him and because of that the compromise failed. One

of the grounds is that the learned court below has ignored the material evidence available on the record regarding the earning of O.P. No. 2. The

petitioner has admitted in one of the grounds that he is still ready to get admitted his son in a prestigious institution and is ready to bear the entire

expenses i.e. education, hostel charges, tuition fee etc.

This Court has carefully considered the grounds raised by the petitioner on the face of the materials available on the record. This Court finds that on

the point of employment of his wife he had brought on record only a visiting card and a receipt of a sewing centre which cannot be said to be reliable

piece of evidence to show that the applicant's wife is running a sewing centre and is having independent income sufficient to maintain herself. The

applicant's wife has on the other hand brought on record the certificate issued by the Mukhiya of the Gram Panchayat showing that she has no

other source of income and she is totally dependent upon the income of her parents.

This Court finds that admittedly the petitioner has entered into a second marriage. He is well placed in life on financial front and has even desired to

pay the entire expenses of his minor son. His income on which the finding has been recorded by the learned Principal Judge is not in dispute. Since the

date of passing of the impugned judgment his salary must have increased by now.

Under these circumstances this Court is of the considered opinion that the learned Principal Judge, Family Court, Saran at Chapra has passed a very

well reasoned judgment discussing all aspects of the matter and sitting in its revisional jurisdiction this Court finds no illegality or infirmity in the

impugned judgment so as to interfere with the same.

By filing an interlocutory application the petitioner has informed this Court that by virtue of the office order dated 29.06.2019 issued by the Principal,

Government Industrial Training Institute, Mirzapur, a monthly deduction of Rs. 26,000/- is being made from the salary of the petitioner and the same is

being remitted to the opposite party towards payment of the current maintenance as well as installments of the arrears of maintenance since June,

2019. Although, he claims that he is getting Rs. 38,000/- as salary but has not enclosed with the records his salary slip even as to prima-facie satisfy

this Court with his averment in the interlocutory application.

Moreover, this Court is satisfied that if his wife and minor son can live with a sum of Rs. 13,000/- per month only why the petitioner cannot sustain

himself with an amount which would be even as per his own averments double of the amount available to his wife and the minor son. After all he is

liable to ensure that his wife and minor son live in the same status in which he is living. He has also to take care of his own words that he is ready to bear all educational expenses of his minor son.

This Court, therefore, finds no merit in the revisional application. The revisional application with the interlocutory application are hereby dismissed.

The employer of the petitioner shall continue to deduct the amount as per the office order stated hereinabove and while making payment of the arrears

of maintenance. If the petitioner produces any proof of payment by him of any amount to his wife and minor son in terms of the order of payment of

ad-interim maintenance and thereafter in terms of the impugned judgment, to that extent he may claim adjustments against the arrears of maintenance

which will be allowed to him.

This application stands disposed off accordingly.