

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No.10 of 2022

Raghubar Singh @ Raghuber Singh Petitioner
Versus

1.The State of Jharkhand

2.Aradhya Samridhi

3.Adityadeo Singh Opposite Parties

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. Santosh Kumar Soni, Advocate

For the State : Mrs. Priya Shrestha, Spl. P.P.

For the O.P. Nos.2 & 3 : Mr. Suraj Singh, Advocate

Mr. Akshay Kumar, Advocate

C.A.V. on 11.12.2023

Pronounced on 11.01.2024

1. Heard learned counsel for the petitioner, learned Special P.P. for the State and learned counsel for the O.P. Nos.2 and 3.
2. The present criminal revision has been preferred against the order/judgment dated 25th November, 2021 passed by the learned Principal Judge, Family Court, Hazaribag in Original Maintenance Case No.154 of 2018, whereby the petitioner has been directed to pay Rs.5,000/- per month each to Opposite Party Nos.2 and 3 as maintenance from the date of filing of the case.
3. The brief facts leading to this criminal revision are that the maintenance application was moved on behalf of the petitioner Nibha Singh and her two minor children, namely, Aradhya Samridhi and Adityadeo Singh under Section 125 Cr.P.C. with these averments that the petitioner – Nibha Singh was married with Opposite Party – Raghubar Singh on 2nd December, 2010 according to Hindu rites and rituals. Two children were born out of their wedlock. Out of them one is son and another is daughter.

The petitioner was tortured by the Opposite Party (husband) for non-fulfilment of additional demand of Rs.5 lacs as dowry. Panchayati and conciliation proceeding was also held many times. After a panchayat on 9th September, 2018 she also went along with both the children to her matrimonial house but on account of repeated demand of Rs.5 lacs and for non-fulfilment of the same she compelled to file Sadar (Mahila) P.S. Case No.12 of 2018 which was registered under Section 498-A I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act. The Opposite Party (husband) has been neglecting to maintain the petitioner and her two minor children while he has sufficient means as he is getting Rs.45,000/- salary per month and has also income of Rs.10 lac from the ancestral agricultural land. In view of above prayed the maintenance amount for herself and her two minor children.

- 4.** On behalf of the Opposite Party (husband), reply of the show-cause was filed in which he stated that petitioner – Nibha Singh is able to maintain herself. She has been working since 2017, much before filing the maintenance application, in Rural Self Employment Training Institute, Hazaribagh managed by Allahabad Bank with active co-operation from the Government of India and State Government. She is Office Assistant and had joined on 20th February, 2017. She is getting salary of Rs.13,200/- per month and her present salary is not in his knowledge. As such she is able to maintain not only herself but the two children as well. In view of the above prayed to dismiss the maintenance application.

- 5.** The learned trial court framed the following points for determination :
- i. Whether the petitioner-1 is legally wedded wife of OP and remaining two minor petitioners are daughter and son respectively born out of said wedlock ?
 - ii. Whether the petitioners are unable to maintain herself ?
 - iii. Whether the OP has sufficient means and what is his income ?
 - iv. Whether the OP has been voluntarily neglecting to maintain the petitioners ?
 - v. Whether the petitioner-1 has sufficient cause to live separately ?
 - vi. Whether the petitioners are entitled of maintenance from OP and if yes then quantum ?
- 6.** On behalf of the petitioner in oral evidence examined three witnesses, P.W. 1 Om Prakash Jha, P.W.2 Nibha Singh and P.W.-3 Ramjit Singh.
- 7.** On behalf of the Opposite Party in oral evidence examined O.P.W. 1 Raghubansh Narayan Singh and O.P.W. 2 Raghubar Singh.
- 8.** No documentary evidence was adduced on behalf of either parties.
- 9.** The learned Family Court passed the impugned judgment whereby the maintenance application was allowed in part, wherein the prayer for the maintenance for the wife was refused while the prayer for maintenance of two minor children was allowed and Opposite Party (husband) was directed to pay Rs.5000/- each per

month to both the minor children from the date of filing the maintenance application.

10. Aggrieved from the impugned judgment, this criminal revision has been directed on behalf of the husband on the ground that the impugned order passed by the learned Family Court is bad in the eyes of law and same is based on erroneous finding recorded by the learned Family Court. The learned Family Court has not given any finding in regard to the income of the petitioner-husband and has based the finding on the conjectures that the petitioner is having sufficient means to maintain both the children. The learned Family Court has not taken into consideration that wife is also a serving lady and she also has the sufficient income to maintain both the children. The petitioner is having no source of income and is unemployed after COVID-19 pandemic. In view of above prayed to allow this criminal revision and to set aside the impugned judgment.

11. I have heard the learned counsel for the parties and perused the materials available on record.

12. For disposal of this criminal revision this point of determination is being framed :

i. Whether the quantum of maintenance amount as awarded by the learned Family Court for both the minor children is excessive and disproportionate in view of income of father of both the children ?

13. On behalf of the wife while claiming maintenance for herself

and for both the minor children as stated in the maintenance application that her husband is getting Rs.45,000/- per month salary and has income of Rs.10 lacs from the ancestral agricultural land.

14. Per contra on behalf of husband and father of both the minor children, it has been averred that he is unemployed leading his life miserably with no source of income after COVID-19 pandemic and not in a condition to pay any maintenance amount for the wife or both the children as well.

15. P.W.1 Om Prakash Jha is the independent witness. He has stated that the Opposite Party i.e., Raghubar is doing job in NGO and he is getting Rs.45,000/- per month and Rs.10 to 12 lacs per annum from the agricultural land. In cross-examination, this witness says that Opposite Party has 5 to 6 acre agricultural land in Chhapra of which plot number is not known to him. Nibha Singh (wife) is also doing service in a Unit of Allahabad Bank and she is getting Rs.12 to 15 thousand per month.

16. P.W.2 Nibha Singh in her examination-in-chief says that she works on contract basis and getting Rs.12,000/- per month. She has one son and one daughter and both are residing with her. Her husband is doing job in NGO and getting Rs.40 to 45 thousand per month and has agricultural land about 8 to 9 acres in Chhapra. In cross-examination, this witness says that she is not aware in regard to plot number of the land. She has joined service on 20th February, 2017. Her husband resides along with parents in the in-

law's house.

17. P.W.-3 Ramjit Singh in his examination-chief says that his daughter was married on 2nd December, 2010 with Raghubar. Both lived "Well" for five years thereafter dispute arose. A panchayat was also held and his daughter was ousted from matrimonial house in 2018. Since then she has been residing with him along with her both children. He further says that his daughter is getting Rs.10 to 12 thousand per month while her son-in-law is getting Rs.45,000/- per month and has annual income of Rs.10 lacs from the agricultural land. In cross-examination, this witness says that his natini has got admission in Carmel school in the year 2018 but the nati has not got admission in any school. He is not aware in which NGO his son-in-law is doing job. It is wrong to say that his son-in-law is un-employed that's why his daughter hates him.

18. On behalf of the Opposite Party in maintenance case examined O.P.W.1 Raghubansh Narayan Singh. He in his examination-in-chief stated that he is father of Rabhubar who was married in the year 2010 with Nibha Singh. For two years back his daughter-in-law has been residing in her parental house and has not come back to the matrimonial house. Both the children are residing with her. His daughter-in-law is getting Rs.14,000/- per month. She is employed in Allahabad bank for more than two years back. In cross-examination, this witness says that his son Raghubar was loan Manager in HDFC Bank, thereafter, he works in NGO. He further says that his both sons are employed and he is getting no

help from them.

19. O.P.W. 2 Raghubar Singh in his examination-in-chief says that Nibha Singh is Office Assistant in Allahabad and she is getting Rs.14,000/- per month. He is tutor and is getting only Rs.7,000/- per month. He has no other source of income. He has not filed the PAN card or Income Tax Return. What TDS was deducted from his account is not known to him. Earlier he was Loan Manager in HDFC bank. He further says that he will never keep his wife and both children with him.

20. From the evidence adduced on behalf of both the parties, it is proved that the Opposite Party – Raghubar Singh who was earlier Loan Manager in a Bank and after he is doing service in NGO, this fact is not only proved from the witness on behalf of the petitioner-wife but also O.P.W. No.1 Raghubansh Narayan Singh also admit this fact that earlier his son was loan Manager in HDFC bank and thereafter is doing job in NGO while Raghubar Singh O.P.W. No.2 has given contrary statement in his evidence. He also admit that he was doing job in NGO after service of Loan Manager in HDFC Bank. He says that he is tutor and he is getting only Rs.7,000/- and has no other income but this testimony of O.P.W. No.2 is belied by the statement of his father O.P.W. No.1 himself, who says that his son is doing job in NGO and earlier he was loan manager in HDFC bank. As such this fact is proved that the Raghubar Singh (husband) is doing job in NGO. So far as his income is concerned, the same is not disclosed by the husband of

Nibha Singh and the father of the minor children while the burden of proof lies upon him in view of Section 106 of the Evidence Act since this particular fact is in knowledge of Raghubar Singh (husband). Therefore adverse inference will be drawn against him for not adducing the documentary evidence in regard to his income in view of Illustration 'g' of Section 114 of the Evidence Act.

21. From the oral evidence on record, it is also proved that the ancestral agricultural land is also in Bihar. This fact is admitted to Raghubar Singh, O.P.W. 1 and his father O.P.W. 2 Raghubansh Narayan Singh himself and they both nowhere have stated that annual income from the agricultural land is not Rs.10 lacs.

22. O.P.W. No.1 Raghubansh Narayan Singh in his statement very fairly says that **he is not dependent upon his two sons. His both sons are employed and he is getting no help from them. In view of his testimony, it is also proved that the Raghubar Singh (Opposite Party in the maintenance application) has no liabilities with him to maintain except his two children.**

23. So far as the income of the petitioner—wife in the maintenance application is concerned, admittedly she is getting Rs.12 to 14 thousand per month and she is maintaining herself and both the minor children. Even if the salary of the wife Nibha Singh is taken into consideration, **the responsibility of father of both the children is also to maintain both the children.**

- 24.** Though the learned trial court has not given its finding in regard to the income of the Opposite Party in maintenance application, yet given finding in regard to means to maintain both the minor children taking into consideration 8 to 10 acres of ancestral land, in which Opposite Party of maintenance application is also having vested right and in view of doing job in NGO. The finding given by the learned trial court while directing the Opposite Party – husband to pay the maintenance amount of Rs.5,000/- per month for both the minor children and this maintenance amount is not found disproportionate in view of income of the Opposite Party of the maintenance application, who is also income tax payee.
- 25.** In view of the finding given herein above this point of determination is decided in favour of the respondent and against the petitioner.
- 26.** Accordingly, this criminal revision is, hereby, dismissed and the impugned order passed by the learned court below is hereby affirmed.
- 27.** The interim order dated 4th July, 2023 stands vacated.
- 28.** Let a copy of this order be communicated to the court concerned through 'FAX'.

(Subhash Chand, J.)