

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1354 of 2019

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

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Rajesh Kumar Son Of Syamali Singh Resident Of Village - Ghonghsa, P.S.-
Halsi, Distt - Lakhisarai. The Then Posted At Tripura In C.R.P.F, Presently
Posted In Manesar, Gurgaon.

... .. Petitioner/s

Versus

Nutan Devi Wife Of Rajesh Kumar, D/O Bimaldeo Prasad Singh Resident Of
Village - Ghongsa, Ps.- Halsi, Distt - Lakhisarai, Presently Resident Of
Village - Mafo, P.S.- Mehus, Distt - Sheikhpua.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Narain Sinha, Advocate
For the O.P. : Mr. Rambabu Yadav, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 18-02-2025

The present Criminal Revision petition has been preferred by the petitioner-husband against the impugned order dated 26.04.2019, passed by learned Principal Judge, Family Court, Sheikhpura in Maintenance Case No. 29M of 2017, whereby learned Family Court has directed the petitioner-husband to pay Rs. 15,000/- per month from the date of filing of the petition towards her maintenance.

2. The factual background of this case is that the marriage was solemnized between the petitioner/Rajesh Kumar and Opposite Party/Nutan Devi on 07.05.2009, as per Hindu rites and customs and subsequent to the marriage, the wife



joined her husband in his matrimonial home. But soon thereafter, marriage started running into rough weather on account of additional demand of dowry and on account of non-fulfillment of the same, torturing of the O.P./wife by the husband.

3. It is further stated by wife in her maintenance petition that husband (petitioner herein) is in CRPF, drawing monthly salary of Rs. 50,000/- and she has no means of income and is unable to maintain herself.

4. It further transpires that on notice, the husband appeared in the maintenance proceeding and contested the maintenance petition filed by her wife. As per husband, just after seven days of marriage, the wife left the matrimonial home on her own without any sufficient reason. Subsequently, the husband filed one matrimonial petition under Section 9 of Hindu Marriage Act for restitution of conjugal rights bearing Matrimonial Case No. 199 of 2016 and the same has been decreed *ex-parte* in favour of the husband. Subsequently, even *ex-parte* divorce has been also obtained by the husband against his wife.

5. After trial, learned Family Court found that the husband is a Constable in CRPF and getting monthly salary of



Rs. 30,000/- and hence, directed the husband to pay Rs. 15,000/- per month to his wife towards her maintenance.

6. I heard learned counsel for the petitioner and learned counsel for the Opposite Party.

7. Learned counsel for the petitioner submits that the impugned order is not sustainable in the eye of law. To substantiate his claim, he submits that as per finding of the Family Court, the monthly salary of the husband was Rs. 30,000/- and out of Rs. 30,000/- per month, Rs. 15,000/- has been directed to be paid to his wife towards maintenance. That is against all legal principles in regard to maintenance, admissible to wife. He further submits that besides the wife, even his parents are also dependent upon him.

8. He further submits that subsequent to the maintenance order, he has got *ex-parte* divorce against the wife and thereafter, no appeal has been preferred by the wife against the previous decree of restitution of conjugal rights or even decree of divorce passed on 13.06.2019 and the petitioner has entered into second marriage with another lady on 28.06.2020 and at present, even one daughter is born out of the wedlock with the second wife. Even second child is expected by the second wife within few months.



9. Hence, the impugned order directing the petitioner-husband to pay Rs. 15,000/- per month to his previous wife is neither maintainable in law, nor feasible in practice by the petitioner-husband.

10. However, learned counsel for the Opposite Party/wife defends the impugned order submitting that there is no illegality or infirmity in it. He further submits that decree of restitution of conjugal rights as well as divorce petition has been passed *ex-parte* without any knowledge of the wife/O.P. and no notice was served and hence, she was not aware.

11. He further submits that on account of medical and financial difficulty, she has not preferred even appeal against the decree of restitution of conjugal rights as well as divorce. He further submits that passing of restitution of conjugal rights is not a hurdle in awarding of maintenance in favour of the wife. He refers to and relies upon **Rina Kumari Vs. Dinesh Kumar Mahto, 2025 SCC OnLine SC 72.**

12. He further submits that after the marriage, she had joined the matrimonial home of her husband, but additional demand of dowry started and on account of non-fulfillment of the same, she was subjected to cruelty, which she was unable to bear. Hence, she went back to her *mai*ke and without any



information, the decree of restitution of conjugal rights as well as divorce has been passed.

13. I considered the rival submissions of the parties and perused the materials on record.

14. I find that marriage is not disputed and even salary at the time of filing the petition is not disputed. Only dispute is living of the wife separately from the husband without any reasonable cause. As per husband, she has left the matrimonial home without any rhyme and reason and hence, she is not entitled to get any maintenance and even restitution of conjugal rights has been decreed *ex-parte* against his wife. However, Hon'ble Supreme Court in **Rina Kumari (supra)** has held as follows:-

“**29.** Thus, the preponderance of judicial thought weighs in favour of upholding the wife's right to maintenance under Section 125 Cr. P.C. and the mere passing of a decree for restitution of conjugal rights at the husband's behest and non-compliance therewith by the wife would not, by itself, be sufficient to attract the disqualification under Section 125(4) Cr. P.C. It would depend on the facts of the individual case and it would have to be decided, on the strength of the material and evidence available, whether the wife still had valid and sufficient reason to refuse to live with her husband, despite such a decree. There can be no hard and fast rule in this regard and it must invariably depend on the distinctive facts and circumstances obtaining in each particular case. In any event, a decree for restitution of conjugal rights secured by a husband coupled with non-compliance therewith by the wife would not be determinative straightaway either of her right to maintenance or the applicability of the disqualification under Section 125(4) Cr. P.C. Thus, the preponderance of



judicial thought weighs in favour of upholding the wife's right to maintenance under Section 125 Cr. P.C. and the mere passing of a decree for restitution of conjugal rights at the husband's behest and non-compliance therewith by the wife would not, by itself, be sufficient to attract the disqualification under Section 125(4) Cr. P.C. It would depend on the facts of the individual case and it would have to be decided, on the strength of the material and evidence available, whether the wife still had valid and sufficient reason to refuse to live with her husband, despite such a decree. There can be no hard and fast rule in this regard and it must invariably depend on the distinctive facts and circumstances obtaining in each particular case. In any event, a decree for restitution of conjugal rights secured by a husband coupled with non-compliance therewith by the wife would not be determinative straightaway either of her right to maintenance or the applicability of the disqualification under Section 125(4) Cr. P.C. Thus, the preponderance of judicial thought weighs in favour of upholding the wife's right to maintenance under Section 125 Cr. P.C. and the mere passing of a decree for restitution of conjugal rights at the husband's behest and non-compliance therewith by the wife would not, by itself, be sufficient to attract the disqualification under Section 125(4) Cr. P.C. It would depend on the facts of the individual case and it would have to be decided, on the strength of the material and evidence available, whether the wife still had valid and sufficient reason to refuse to live with her husband, despite such a decree. There can be no hard and fast rule in this regard and it must invariably depend on the distinctive facts and circumstances obtaining in each particular case. In any event, a decree for restitution of conjugal rights secured by a husband coupled with non-compliance therewith by the wife would not be determinative straightaway either of her right to maintenance or the applicability of the disqualification under Section 125(4) Cr. P.C.”

15. Hence, it is clear that passing of decree of restitution of conjugal rights is not a bar to award any maintenance to the wife, if the Court is convinced and satisfied that she is living separately from her husband with valid reason



and in the case on hand, it clearly transpires from the record that she is living separately at her *maike* on account of cruelty committed by the husband due to non-fulfillment of demand of additional dowry.

16. However, I find that undisputedly the petitioner-husband was getting monthly salary of Rs. 30,000/- at the time of filing the maintenance petition and out of Rs. 30,000/-, award of Rs. 15,000/- per month towards maintenance is excessive.

17. Hence, the impugned order is modified by reducing the amount of maintenance @ Rs. 9,500/- per month, payable by the husband to his wife since the date of filing the maintenance petition.

18. However, this rate of maintenance will be subject to increment @ 5% *per annum* from today. In other words, after one year from today, the amount of the maintenance will be increased by 5% of maintenance and this increment will keep going on in the month of February every year and this maintenance will be permissible to the wife till she remarries.

19. The husband is having higher salary at present. But the number of dependents has also increased, because he has one additional legally wedded wife and one daughter born out of the wedlock with the new wife and as per statement of the



learned counsel for the petitioner-husband, even second child is expected in a few months. Hence, increment of maintenance @ 5% *per annum* would be sufficient in the interest of justice.

20. It further transpires that during the pendency of this petition, petitioner-husband has made some payment. Hence, the petitioner-husband is also directed to pay up the whole arrear amount after setting off the payment already made towards maintenance, within the next two months by way of bank draft. In case, the arrear is not paid, it will be treated as a contempt of Court and the petitioner-husband would be dealt with accordingly.

21. Accordingly, the present petition stands disposed of.

22. Put up this matter on 18.04.2025, for compliance regarding payment of the arrears.

(Jitendra Kumar, J.)

shoaib/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.02.2025.
Transmission Date	19.02.2025.

