IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.164 of 2019

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

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1. Hasina Khatoon W/o- Aszad Ansari, D/o Md. Alluddin Ansari, R/O. Village- Pandri, P.S.- Dhaka (Jamua), District-East Champaran, At Present - R/O. Village- Chandanbara, P.S.- Dhaka, Dist.- East Champaran.
2. Jamuna D/o- Aszad Ansari (Under the guardianship of his mother Hasina Khatoon), R/O. Village- Pandri, P.S.- Dhaka (Jamua), District-East Champaran, At Present - R/O. Village- Chandanbara, P.S.- Dhaka, Dist.- East Champaran.

... ... Petitioner/s

Versus

Aszad Ansari S/o- Saffique Ansari, R/O Village- Pandri, P.S.- Dhaka, Dist.- East Champaran.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Singh, Advocate
For the O.P.	:	Mr. Upendra Kumar, Advocate.
Amicus Curiae	:	Ms. Soni Srivastava, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR

CAV JUDGMENT

Date :28-02-2025

The present Criminal Revision petition has been preferred against the impugned order dated 12.12.2018, passed by learned Principal Judge, Family Court, East Champaran at Motihari in Maintenance Case No. 66 of 2012, whereby learned Principal Judge has directed the opposite party/Aszad Ansari to pay Rs.1,500/- per month to the petitioner no.1, who is wife of the opposite party, towards her maintenance since the date of the order i.e. 12.12.2018 and to pay Rs.5,000/- to her towards the litigation cost. However, learned Family Court has not passed any order in regard to maintenance to the petitioner no.2,

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who is daughter of the petitioner no.1 and opposite party, though she was also petitioner no.2 before the Family Court.

2. As per the maintenance petition filed by the petitioners before the Family Court, the petitioner no.1 Hasina Khatoon was married with opposite party, Aszad Ansari in the year 2007 as per Islamic Rites and Customs. After the marriage, she joined the matrimonial home of her husband and out of the wedlock, petitioner no.2 Jamuna was born who was 4 years old at the time of maintenance petition before the Family Court. As per further averment made in the maintenance petition, after the marriage, demand of additional dowry of Rs.2,00,000/- started on the part of the opposite party/husband and on account of non-fulfillment of the same, she was subjected to cruelty and was finally ousted from the matrimonial home. Hence, a criminal case under Section 498A IPC was lodged in the Court of learned S.D.J.M. As per further averment, opposite party/husband runs a boutique shop in Bombay earning Rs.30,000/- per month and he has also four *bighas* of agricultural land earning annual income in lacs. As per further statement of the petitioner/wife, the opposite party has also a shop at his home. The petitioners had sought Rs.20,000/- per month towards their maintenance.

3. On notice, the opposite party appeared before the

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Family Court and filed his show cause contesting the maintenance petition of his wife and child. He claimed that the allegation made in the petition was false and concocted, and hence the maintenance petition was liable to be dismissed. He denied that there was any demand of dowry and torturing therefor. However, he has admitted his marriage with the petitioner No. 1 and it was also admitted that after the marriage, she joined his matrimonial home. But it was claimed that she was not living with him wholeheartedly. She always used to threaten him to leave the matrimonial home. On account of such conduct of the petitioner/wife, the opposite party/husband and his family members were unhappy with her. He further claimed that without his permission, his wife used to leave the matrimonial home to go her *maike* and she used to come back at the matrimonial home at her sweet-will and when he went to Bombay for work, she went to her *maike* along with the daughter and when the family members of the opposite party went to her *maike* to take her back to the matrimonial home, she used to flatly refuse to come back to the matrimonial home. When he came back at home on 04.02.2012 from Bombay, he went to *maike* of his wife to take her and his daughter to the matrimonial home, but he was mistreated by her mother and it

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was stated that his wife would not live with him, and it was informed that the petitioner/wife was living with one Md. Amanullah and she would live her rest life with him. For personal talk with the petitioner/wife, he went to the house of aforesaid Amanullah, but she also misbehaved with him and refused to join him at his matrimonial home and stated to him that no longer she recognized him as her husband, nor did she want to go back to his house. The information for such conduct was given to the Court of S.D.O., Sikrahna. The petitioner/wife also divorced him in the presence of the witnesses who had accompanied him and, thereafter, the amount of *Dain-mehar* was paid to her. Hence, the matrimonial relationship came to end between the petitioner and the opposite party. He has filed divorce petition bearing No. 258 of 2012 in Court. Hence, he has claimed that petitioner is not entitled to get any maintenance.

4. During trial, all together five witnesses were examined on behalf of the petitioners: **P.W.-1 - Wahida Khatoon** (Mother of petitioner/wife), **P.W.-2 – Hasina Khatoon,** (petitioner/wife herself), **P.W.-3 – Tausif Ahmad,** (though he has been inadvertently shown as P.W.1. He is brother of the petitioner/wife), **P.W.-4 – Sagira Khatoon,**

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(though she has been shown as P.W.-2. She has also claimed to be mother of petitioner/wife), **P.W.-5- Fatima Khatoon** (However she has not been numbered as a witness).

5. No document has been brought on record during the trial by the petitioners.

6. Opposite Party has examined three witnesses, including himself: **O.P.-1- Safique Ansari** (Father of the Opposite Party/husband), **O.P.-2- Sahim Miyan** (Co-villager of the Opposite Party and **O.P.-3- Aszad Ansari** (Opposite Party himself).

7. Petitioner no.1 **Hasina Khatoon**, who has been examined as **P.W.-2**, in her examination-in-chief, has reiterated her statements as made in her petition. However, she has not been cross-examined by opposite party despite opportunities. **P.W.-1**, **Wahida Khatoon**, in her examination-in-chief, has also supported the statements as made by the petitioners in their petition. She has been also not cross-examined by the opposite party despite opportunity. **P.W.-3, Taushif Ahmad,** has also supported the statements of the petitioners as made in her petition. He has been also not fully cross-examined despite opportunity.

8. P.W.-4, Sagira Khatoon, in her examination-in-

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chief, has also supported the statements of the petitioners. However, she has been also not fully cross-examined. As per the part cross-examination, her cross-examination was to be continued, but there is no evidence to show that further cross-examination took place. Hence, her examination is not complete.

9. P.W.-5, Fatima Khatoon, has also supported the statements of the petitioners in her examination-in-chief. However, she has been also not cross-examined by the opposite party. To Court question, she deposed that Hasina Khatoon is her sister-in-law and her husband Aszad Ansari does the work of boutique in Bombay. Hasina Khatoon works in a group, earning Rs. 2,000 to 4,000. However, she has never visited the place where the husband of the petitioner No.1 works. Aszad Ansari has entered into second marriage and the petitioner no.1 is living separately from her husband for 12 years, but she wants to live with her husband.

10. The opposite party, Aszad Ansari, who has been examined as **O.P.W.-3**, admits that he had married the petitioner no.1 and out of the wedlock, one daughter Jamuna Khatoon was born. He has further deposed that prior to marriage itself, the petitioner no.1 had illicit relationship with her relative

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Md. Amanullah and that is why she used to leave her matrimonial home without any permission and on protest, she used to quarrel, and despite several protests, she did not mend her ways and during his absence, she left the matrimonial home with all her belongings. When he went to the *maike* of the petitioner/wife, her mother told him that she would not go with him. She had gone to the house of Md. Amanullah of Ghorasahan and she would live with him. He again went to Ghorasahan to request her to come back to her matrimonial home, but she flatly refused to come with him and she and Md. Amanullah misbehaved with him. She also stated that she did not want to continue any relationship with him. On 10.02.2012, a panchayati was organized and in that panchayati, he divorced his wife by triple *talak* and the amount of *Dain-mehar* was also paid back to her. Even maintenance of iddat amount was paid to her and thereafter, they are living their independent life. He has also filed Divorce Petition bearing No. 258 of 2012 for decree of divorce. He has also claimed that the petitioner no.1 is Anganbari Sevika earning Rs.3500/-. He does work of simple tailoring and he has to maintain his old parents also. In his **cross-examination**, he has deposed that he works in a private shop of tailoring at Bombay earning Rs.250/- per day. He knows

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Md. Amanullah of Ghorasahan.

11. O.P.W.-1 and **O.P.W.-2**, who are father and co-villager of the opposite party, respectively, have also given similar testimony in support of the opposite party.

12. I heard learned counsel for the petitioners. As nobody was present on behalf of the Opposite Party despite valid service, Shri Upendra Kumar, learned APP was requested to assist the Court on behalf of the Opposite Party. Ms. Soni Srivastava has also been appointed as Amicus Curiae in this case to assist the Court. Hence, I also heard Shri Upendra Kumar and Ms. Soni Srivastava.

13. Learned counsel for the petitioners submits that gross illegality has been committed by learned Family Court by not passing any order in regard to maintenance to the petitioner No. 2 who was petitioner No. 2 before the Family Court also. Undisputedly, she is a minor daughter born out of the wedlock between the petitioner No. 1 and opposite party. Hence, she has entitlement to get maintenance from her father but despite such entitlement, no maintenance has been granted in her favour.

14. He further submits that even the quantum of maintenance directed to be paid to petitioner No. 1/wife by the opposite party/husband is inadequate in view of the facts and

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circumstances of the case. The opposite party has monthly income of Rs.30,000/- from his Boutique shop besides income from the landed property and additional shop of the opposite party at his home.

15. He also submits that the maintenance amount has been directed to be paid from the date of the impugned order, whereas it should have been made payable from the date of the filing of the maintenance petition in view of Section 125(2) Cr.PC.

16. However, Shri Upendra Kumar, learned APP has submitted on behalf of the Opposite Party that though the impugned order may be assailed on the point that no maintenance order has been made in favour of the petitioner No. 2 who is minor daughter of opposite party out of the wedlock of the opposite party with petitioner No. 1, there is no illegality or infirmity as far as quantum of maintenance awarded in favour of petitioner No. 1/wife is concerned. As a matter of fact, she was not even entitled to get maintenance on account of adulterous life she has been living. However, the order has not been challenged by the opposite party. Hence, there is no question to set aside the impugned order. The present petition has been filed by the petitioner/wife and minor daughter for maintenance at

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enhanced rate.

17. He also submits that marriage has already been dissolved between petitioner No. 1 and opposite party by way of divorce and maintenance for the iddat period has already been paid by the opposite party to the petitioner No. 1 in addition to payment of Dain-mehar payable to her and, hence, petitioner No.1/wife is not entitled to get any maintenance from the opposite party/husband.

18. Ms. Soni Srivastava, learned Amicus Curiae has made detailed submission regarding legal provisions in regard to maintenance payable to the Muslim wife or divorced Muslim wife. She has referred to almost all the relevant judicial precedents starting from **Danial Latifi and Another Vs. Union of India, (2001) 7 SCC 740** till the recent judgment **Md. Abdul Samad Vs. State of Telangana and Another, (2025) 2 SCC 49** to submit that despite the Muslim Women (Protection of Rights on Divorce) Act, 1986, Muslim wife or Muslim divorced wife are entitled to get maintenance from her husband or former husband under Section 125 Cr.PC if she is unable to maintain herself during her marriage or even after divorce till she gets re-married. The rights created under the provisions of 1986 Act are in addition to and not in derogation of the rights created under

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the statutory provisions of maintenance under the Cr.PC 1973. In support of her submission, she also refers to the concluding part of the judgment of **Md. Abdul Samad case (supra)**.

19. She also submits that under Section 125(4) Cr.PC, wife is not entitled to get maintenance only if she is "living in adultery". Here, the phrase "living in adultery" means a continuous adulterous conduct and not a single or occasional lapse on the part of the wife at or around the time of the filing of the petition and subsequent thereto.

20. I considered the submission advanced by both the parties and learned Amicus Curiae.

21. As per pleadings and evidence of the parties on record, I find that marriage between the petitioner No. 1 and opposite party as per Muslim rites and customs is admitted. Even birth of petitioner No. 2 out of the wedlock between the opposite party and petitioner No. 1 is admitted. However, there is rival claims by the petitioner No. 1 and opposite party regarding reason to live separately. As per the petitioner/wife, she was subjected to torture on account of non-fulfillment of additional demand of dowry and was finally ousted by the opposite party/husband along with her daughter from the matrimonial home. However, as per the opposite party/husband,

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there was no demand of any dowry and there was no question of any torturing therefor. As a matter of fact, the petitioner/wife was in illicit relationship with one Md. Amanullah since prior to the marriage and this illicit relationship continued even after the marriage and, hence, she was not living wholeheartedly at his home and when he went to Bombay for doing work, she went back to her *maike* despite protests from his family members to live adulterous life with said Md. Amanullah and despite request by his family members, she did not come back to his matrimonial home. Even when the opposite party returned to his home from Bombay and went to his sasural to take his wife back to his matrimonial home, his mother-in-law informed that his wife would not join him at the matrimonial home and she had gone to the house of Md. Amanullah to live rest life with him and as per further statements of the opposite party, even when he went to the house of Amanullah to have personal talk with his wife, he was misbehaved by his wife and Md. Amanullah and she refused to come to his matrimonial home and divorced him in the presence of the persons who had gone there along with him. Even Dain-mehar was paid by him to her. Even in Panchayat, she stated that matrimonial relationship between them was broken. Hence, he has divorced his wife by

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triple talak and one Matrimonial case was filed in the court of law by decree of divorce.

22. During trial, opposite party and his witnesses have also deposed that the petitioner/wife is *Anganbari Sevika* having monthly salary of Rs.3,500/-. But I find that there was no such pleading in his show-cause as filed to contest the maintenance petition. As such, this claim has come for the first time during evidence without any previous pleading. Hence, it is not persuasive for the Court to accept such statement during trial without any pleading. It is a settled principle of law that any evidence without any pleading cannot be taken into account.

23. I further find that regarding monthly income of Rs.30,000/- of the opposite party from his Boutique work in Bombay, it has been consistently claimed by the petitioner/wife in her maintenance petition as well as in her evidence during trial, and such claim has been supported by her other witnesses. The opposite party has not even cross-examined the petitioner or her witnesses on this point. Though in his examination-in-chief, he has claimed that he works as a tailor having only Rs. 250/- per day and he has no income from other sources, this Court has no option but to accept the claim of the petitioner/wife that the opposite party/husband is having

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monthly income of Rs.30,000/- from Boutique work, even if other sources of income as claimed by the petitioner is not accepted, for want of any documentary proof. Hence, minimum income of the opposite party is held to be Rs. 30,000/- per month and for want of any pleading on the part of the opposite party regarding the income of the petitioner/wife, the wife is held to have no means to maintain herself and her minor daughter.

24. There is no dispute that as per Section 125 Cr.PC, the minor daughter of the opposite party is entitled to get maintenance from her father. But I find that no order has been passed by learned Family Court to pay any maintenance to the petitioner No. 2/minor daughter.

25. I further find that Court is not required to go into legality for direction to opposite party to pay Rs.1,500/- per month to the petitioner/wife towards her maintenance, because such direction has not been challenged by the opposite party/husband. Hence, there is no need to go into entitlement of the petitioner/wife to maintenance under Section 125 Cr.PC. Even allegation of adulterous life of petitioner/wife is not required to be looked into to set aside the impugned order because the opposite party/husband has not challenged the

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impugned order.

26. However, for the sake of clarity regarding law on the issue, it would be suffice to say that despite the Act of 1986, a Muslim wife is entitled to get maintenance from her husband during the subsistence of her marriage under Section 125 Cr.PC, if she is unable to maintain herself. Even after divorce, she is entitled to get maintenance from her former husband under Section 125 Cr.PC if she is unable to maintain herself despite payment of maintenance for iddat period or payment of Dain-mehar, if the former husband has not made provisions for her life during iddat period or the provisions made during the iddat period is not sufficient to maintain herself at the time of the application under Section 125 Cr.PC. Reliance is placed on **Danial Latifi case (supra)** and the recent judgment of **Md. Abdul Samad (supra)** in which Hon'ble Apex Court has dealt with the subject comprehensively after scanning all the relevant judicial precedents, concluding as follows:

> **"115.** What emerges from our separate but concurring judgments are the following conclusions:
>
> **115.1.** Section 125CrPC applies to all married women including Muslim married women.
>
> **115.2.** Section 125CrPC applies to all non-Muslim divorced women.
>
> **115.3.** Insofar as divorced Muslim women are concerned,
>
> **115.3.1.** Section 125CrPC applies to all such Muslim

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women, married and divorced under the Special Marriage Act in addition to remedies available under the Special Marriage Act.

115.3.2. If Muslim women are married and divorced under Muslim law then Section 125CrPC as well as the provisions of the 1986 Act are applicable. Option lies with the Muslim divorced women to seek remedy under either of the two laws or both laws. This is because the 1986 Act is not in derogation of Section 125CrPC but in addition to the said provision.

115.3.3. If Section 125CrPC is also resorted to by a divorced Muslim woman, as per the definition under the 1986 Act, then any order passed under the provisions of the 1986 Act shall be taken into consideration under Section 127(3)(*b*)CrPC.

115.4. The 1986 Act could be resorted to by a divorced Muslim woman, as defined under the said Act, by filing an application thereunder which could be disposed of in accordance with the said enactment.

115.5. In case of an illegal divorce as per the provisions of the 2019 Act then,

115.5.1. Relief under Section 5 of the said Act could be availed for seeking subsistence allowance or, at the option of such a Muslim woman, remedy under Section 125CrPC could also be availed

115.5.2. If during the pendency of a petition filed under Section 125CrPC, a Muslim woman is "divorced" then she can take recourse under Section 125CrPC or file a petition under the 2019 Act.

115.5.3. The provisions of the 2019 Act provide remedy in addition to and not in derogation of Section 125CrPC"**.**

(Emphasis supplied)

27. Under such facts and circumstances and the legal provisions, there is no need to go into the claim of the opposite party that he has divorced his wife/petitioner no. 1, because it is not a case of the opposite party that during the iddat period, he has made provision for the whole life of his divorced wife and

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she is able to maintain herself on the basis of that provision. It is also not a case of the opposite party that his divorced wife has remarried. There is only allegation that petitioner no. 1 is leading an adulterous life. But such allegation is based only on suspicion. There is no cogent evidence adduced in support of his allegation. The proved fact is that his wife is living separately along with the minor daughter and she is unable to maintain herself and the minor daughter.

28. Hence, there is no doubt about the entitlement of the petitioner/wife and her minor daughter to maintenance from the opposite party.

29. Only question for consideration of this Court is what should have been the amount of the maintenance payable by the opposite party to the petitioner/wife and his minor daughter.

30. Here, before deciding the quantum of the maintenance payable to the petitioner/wife and the petitioner/minor daughter, the Court is required to look into not only the income of the opposite party, but even the number of dependents upon the opposite party. Here, it is found that the opposite party has parents and second wife, besides the petitioners as dependents.

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31. Hence, it would be just and proper to direct the opposite party to pay Rs.2,000/- per month each to the petitioner/wife and his minor daughter who is petitioner No. 2 towards their maintenance. In other words, the opposite party is required to pay total Rs. 4,000/- per month to the petitioners towards their maintenance.

32. Now, question is whether the maintenance should be payable from the date of the order passed by learned Family Court or from the date of filing the maintenance petition by the petitioners.

33. Here, it would be relevant to point out that as per the material on record, the petitioners were unable to maintain themselves from the date of filing the maintenance petition and the opposite party was not paying any maintenance amount to them. Hence, the demand of justice is that the allowance for maintenance should have been made payable from the date of filing the petition, i.e. 01.03.2012 and not from the date of the order passed by learned Family Court. Here, even Section 125(2) Cr.PC may be referred to which enables the Court to order payment of the maintenance from the date of the application. As per the judicial precedent, namely, **Shail Kumari Devi & Anr. Vs. Krishan Bhagwan Pathak, (2008) 9**

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SCC 632, even reason is not required to be given for such order and only express order to this effect is sufficient.

34. Hence, it is ordered that the maintenance granted as above shall be payable from the date of the maintenance petition, i.e. 01.03.2012.

35. Hence, the present petition is allowed and the impugned order stands modified, accordingly.

36. Assistance provided by Ms. Soni Srivastava, learned Amicus Curiae is highly appreciated. The Secretary, Patna Legal Services Committee is directed to pay Rs.15,000/- to learned Amicus Curiae towards honorarium within a month of this order. Office is directed to send a copy of this order to Patna Legal Services Committee for information and needful and a copy of this order be also sent to learned Amicus Curiae for her information.

37. Office is also directed to send back the LCR to the Family Court concerned without any delay.

ravishankar/S.Ali/
shoaib

(Jitendra Kumar, J.)

AFR/NAFR	AFR
CAV DATE	25.02.2025.
Uploading Date	28.02.2025
Transmission Date	28.02.2025

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