

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.331 of 2017**

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Gautam Jyoti Son of Ram Keshwar Vishwakarma, Resident of Mallahchak Kutiya, Jehanabad, Police Station- Jehanabad in the District- of Jehanabad.
... .. Petitioner

Versus

1. Renu Devi, Wife of Gautam Jyoti.
2. Uttam Jyoti, Son of Gautam Jyoti, Under guardianship of his mother Renu Devi, Wife of Gautam Jyoti.
Both are Resident of Village- Golakpur, Police Station- Pali in the District- of Jehanabad.

... .. Opposite Parties

with
CRIMINAL REVISION No. 630 of 2017

Arising Out of PS. Case No.- Year-1111 Thana- District-

- =====
1. Renu Devi Wife of Gautam Jyoti
 2. Uttam Jyoti, Son of Gautam Jyoti (Under the natural guardianship of his Mother Renu Devi)
Both are Resident of Village- Golakpur, P.S. Pali, District-Jehanabad.

... .. Petitioners

Versus

1. Gautam Jyoti Son of Sri Ram Keshwar Vishwakarma,
2. Ramkeshwar Vishwakarma, Son of late Narsing Vishwakarma
Both are Resident of Village- Mallahchak Kutiya, P.S. Jehanabad, District Jehanabad.

... .. Opposite Parties

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Appearance :

(In CRIMINAL REVISION No. 331 of 2017)

For the Petitioner/s : Mr. Sunil Kumar, Advocate
For the Opposite Party/s : Mr. Ajay Kumar Thakur, Advocate
Ms. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate

(In CRIMINAL REVISION No. 630 of 2017)

For the Petitioner/s : Mr. Ajay Kumar Thakur, Advocate
Ms. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate
For the Opposite Party/s : Mr. Sunil Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT**

Date : 13-12-2022

Heard learned counsel for the parties.



2. With the consent of learned counsel for the petitioner and the opposite parties in both the revision applications, these two matters have been taken up together for consideration.

3. In Criminal Revision No. 331 of 2017, petitioner is the husband who is aggrieved by and dissatisfied with the judgment and order dated 07.02.2017 passed by learned Principal Judge, Family Court, Jehanabad in Maintenance Case No. 53 of 2014 whereby and whereunder the learned Family Court has partly allowed an application under Section 125 Cr.P.C. preferred by the opposite parties. The learned Family Court, while rejecting the request of the wife-opposite party no. 1 to allow maintenance to her, took a view that the opposite party no. 2 is illegitimate son of the petitioner but would be entitled for a maintenance of Rs. 2,500/- per month. It is this order to pay Rs. 2,500/- per month to O.P. No. 2 which has been challenged by the petitioner.

4. The main ground taken for the challenge is that the learned Family Court has held that O.P. No. 2 is an illegitimate son of the petitioner. It is submitted that the marriage between the petitioner and the O.P. No. 1 could not be proved and there is a categorical finding of the learned Family Court in the impugned judgment that the applicant-wife had failed to prove a valid marriage and/or a long living relationship which were required to take a view that the O.P. No.1 is a legally wedded wife of the petitioner.



5. On the other hand, the opposite party nos. 1 and 2 have preferred Criminal Revision No. 630 of 2017 seeking to challenge the impugned judgment whereunder the claim of maintenance of the opposite party no. 1 has been rejected and the opposite party no. 2 has been allowed a maintenance of Rs. 2,500/- per month only with effect from 10.07.2014.

6. The petitioners in Cr. Rev. No. 630 of 2017 have submitted that the documentary evidences laid before the learned Family Court go a long way to show that the petitioner no. 1 is the wife of O.P. No. 1 and from their wedlock, a son who is O.P. No. 2 was born. It is their further contention that the learned Family Court, Jehanabad has rejected the claim of the applicant no. 1 without appreciating the materials available on the record keeping in view the requirements of Section 125 Cr.P.C. It is submitted that Section 125 Cr.P.C. is a piece of social legislation and the purpose behind incorporating Section 125 Cr.P.C. in the statute book is to provide a succor to the neglected women and children.

7. Both the parties have relied upon some judgments of the Hon'ble Supreme Court. The petitioner in Cr. Rev. No. 331 of 2017 has relied upon a judgment of the Hon'ble Apex Court in the case of **Samir Mandal Vs. State of Bihar and Another** reported in **(2001) 10 SCC 50** to submit that where the marriage between the parties



could not be established, there would be no question of payment of maintenance.

8. Learned counsel for the opposite parties in Cr. Revision No. 331 of 2017 has opposed this application and supported his contentions in Cr. Rev. No. 630 of 2017 on the strengths of the judgments of the Hon'ble Supreme Court in the case of **Gokal Chand Vs. Parvin Kumari @ Usha Rani** reported in (1952) 1 SCC 713, **Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit & Another** reported in (1999) 7 SCC 675 and **Chanmuniya Vs. Virendra Kumar Singh Kushwaha and Another** reported in (2011) 1 SCC 141.

9. This Court has heard both the sides and perused the records. In course of hearing, learned counsel for the petitioner in Cr. Rev. No. 331 of 2017 has produced the copy of the deposition of the witnesses and this Court has gone through the same.

10. On perusal of the impugned judgment, it appears that the learned Principal Judge, Family Court, Jehanabad framed as many as five issues in this case and even as the proceeding under Section 125 Cr.P.C. is supposed to be a summary proceeding, the learned Family Court seems to have gone for deciding the application under Section 125 Cr.P.C. treating it as if it is a suit for declaration as to the validity of the marriage between the petitioner and the O.P. No. 1.



11. In the learned Family Court, the specific case of the O.P. No. 1 was that her marriage was solemnized with the petitioner in Ashadh, 2000 at village Golakpur and from the said wedlock, O.P. No. 2 was born on 13.04.2002. She went her sasural after her duragaman but because of non-fulfillment of the demand of dowry, she was tortured and had been ousted from her matrimonial house on 18.10.2004. In this connection, she had lodged a Complaint Case bearing No. 326 of 2005. She stated that she was living at her parents' house and was on the verge of starvation. As regards the status of the petitioner, she submitted that he happened to be the only son of his father, he has got ten bighas of land in village Sikandarpur and three bighas of land in Mallahchak Kutiya, Jehanabad and two bighas of land in Jehanabad Town. He is engaged in selling of furniture in a shop under name and style of Shuman Sale Furniture from which he has an income of at least Rs. 50,000/- per month. She had also impleaded her father-in-law in the application as according to her, he is a retired revenue employee and has pensionary income of Rs. 15,000/- per month.

The applicant-wife submitted that she and her minor son were being neglected, her son is suffering from brain tumor and for his treatment and education she required money. She further alleged that her husband-petitioner had performed a second marriage which is illegal.



12. The case of the applicant-wife was contested by the husband-petitioner who came with a plea that there was no valid marriage between the petitioner and the O.P. No. 1 and the O.P. No. 2 is not born out of the said wedlock.

13. He further submitted that the Complaint Case No. 326 of 2005 was already dismissed as the case lodged by the opposite party no. 1 could not be proved in course of trial.

14. As stated above, learned Family Court framed as many as five issues. The very first issue is as to whether the applicant no. 1 and the opposite party no. 1 are husband and wife respectively. The second issue framed is as to whether the applicant no. 2 is the son of the opposite party.

15. In support of her case, the applicant-wife produced herself as applicant witness no. 1 whereas her uncle Sitaram Mistri deposed as applicant witness no. 2. The applicant and her witnesses supported her case as stated above. On behalf of the applicant as many as eleven exhibits were marked and two material exhibits which are photographs were marked as Exhibit '1' and Exhibit '1/1' respectively. The opposite party examined himself as well as three other witnesses in support of his case. He produced as many as ten exhibits. The most important fact of his evidence is that at his instance in course of evidence, Exhibit 'B' which is the date of birth certificate of the son (O.P. No. 2) has been marked.



16. This Court finds from the impugned judgment that in course of evidence, the applicant witness supported her case saying that she was thrown out from the matrimonial house but on this point, there was no specific cross-examination on behalf of the husband-opposite party. The applicant produced material Exhibit '1' and '1/1' which are the photographs showing her in the company of the petitioner and his mother, she was found touching feet of his mother. The opposite party-husband has not challenged this material exhibit in course of evidence. The applicant deposed that on her application, a proceeding under Section 107 Cr.P.C. was initiated in Jehanabad Police Station and in the said case, the opposite party no. 1 had submitted a bond in the police station wherein he had accepted the applicant as his legally wedded wife. Even as on this point, no contradiction could be taken from the applicant-wife in course of her deposition, the learned Family Court has not taken it into consideration saying that the said bond had not been produced.

17. This Court finds that there are some uncontroverted documents which are available in support of the case of the applicant-wife. Exhibit '2' and '3' would show that on the request of the applicant, a certificate in proof of residence of the applicant-wife was issued by the Sub-Divisional Officer, Jehanabad. The learned Family Court has noted in the impugned judgment that from Exhibit '1' it appears that the father's name of the boy Uttam Jyoti is written



as Gautam Jyoti in the Modern Centre School Rampur, Patna. Exhibit '4' is the document showing that at the eve of Saraswati Puja, the said school had invited Gautam Jyoti (the petitioner in Cr. Rev. No. 331 of 2017). Exhibit '7' and '8' are the caste certificate and residence certificate respectively whereas Exhibit '9' is the income certificate in which also the name of the petitioner is mentioned as father's name of Uttam Jyoti. Exhibit '7' and '8' were issued in the year 2005. Exhibit '9' was issued in the year 2008 and Exhibit 'B' is the date of birth certificate issued by the Registrar, Birth and Death, Jehanabad Municipality. Exhibit 'B' contains the father's name as Gautam Jyoti and mother's name as Smt. Renu Kumari Sinha and the date of birth of the said Uttam Jyoti (O.P. No. 2) is mentioned as 13.04.2002.

18. The learned Family Court has categorically recorded in its judgment that no challenge was drawn to these documentary evidences by the opposite party. The court has recorded that to controvert the date of birth certificate of O.P. No. 2, the opposite party has not laid any credible evidence. The court has further recorded that the opposite party never made any effort to go for the paternity test of the O.P. No. 2. The court has finally recorded in the impugned judgment in paragraph '6' that from these materials, it appears and strong opinion is formed that father of the boy Uttam Jyoti is this petitioner and the applicant is the mother of the said boy.



19. This Court finds that even as the learned Family Court went on to conclude that from the materials available on the record, a strong opinion is formed that father of the boy is this petitioner and mother is the applicant-wife, the Court went further to observe that no proof of solemnization of marriage showing rituals has been brought by the applicant-wife. It is for this reason that in paragraph '7' of the impugned judgment, the court concluded that because there is no proof of valid performance of marriage or living of the applicant-wife for a long time with the petitioner, the son born out of them cannot be said to be a legitimate child and in these circumstances the son would be treated as illegitimate child.

20. It is this finding in paragraph '7' of the impugned judgment which has been relied upon by learned counsel for the petitioner in Cr. Rev. No. 331 of 2017 to submit that once the learned Family Court decided that there was no valid performance of marriage between the petitioner and the opposite party no. 1, the court has rightly concluded that the opposite party no. 1 would not be entitled for maintenance.

21. This Court has given anxious consideration to these submissions advanced on behalf of the parties and the materials available on the record. To this Court, it appears that having reached to a finding that the O.P. No. 2 is the son of the petitioner and the O.P. No. 1(wife), the learned Family Court has committed gross error



in holding that the O.P. No. 2 would be taken as an illegitimate child of the petitioner and O.P. No. 1(wife). The learned Family Court lost sight of Exhibit '1' and the material Exhibit '1' and '1/1' which remained uncontroverted by the O.P. No. 1. The presence of the O.P. No. 1 in the company of the petitioner touching the feet of the mother of the petitioner and then the fact that during this period O.P. No. 2 was born are such that it would go a long way to show that the applicant-wife has been able to establish a case showing the circumstances in which her marriage with the opposite party no. 1 and the birth of the O.P. No. 2 out of the said marriage was required to be accepted.

22. This Court is, therefore, of the considered opinion that the impugned judgment insofar as it declares O.P. No. 1 in Cr. Revision No. 331 of 2017 not entitled for maintenance and O.P. No. 2 an illegitimate child are liable to be set aside. The findings of the learned Family Court, Jehanabad on both the counts are, therefore, set aside by this Court.

23. The matter is remitted to the learned Family Court, Jehanabad to consider the case of the wife-applicant no. 1 for award of maintenance keeping in view the income of the opposite party no. 1. For this purpose, both the parties shall be allowed to lead their respective evidences and a decision on this issue shall be taken



within a period of 3 months from the date of receipt of the communication of the order of this Court.

24. So far as the award of maintenance of Rs.2,500/- to O.P. No. 2 is concerned, at this stage, this Court finds no material on the record to take a definite view as to the income of the petitioner, therefore, this issue is also left open to be considered by the learned Family Court in the same manner as stated above. The O.P. No. 2 shall be entitled to get maintenance until he attains his majority.

25. Both the revision applications are disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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