

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.373 of 2025

Chandeshwar Kumar Rai @ Moti @ Chandeshwar Kumar Rai S/o Sriballav Prasad Roy @ Ballabh Pd. Rai @ Shri Ballav Pd. Rai @ Shri Ballav Prasad Rai R/o Village- Khajaraitha, P.S.- Parbatta, District- Khagaria.

... .. Petitioner

Versus

1. The State of Bihar
2. Chandani Devi W/o Chandeshwar Kumar Rai @ Moti @ Chandeshwar Kumar Rai, D/o Bhubneshwar Sharma R/o vill- Parsa, P.S.- Jainagar, District Madhubani

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Ravish Mishra, Advocate
Mr. Rakesh Kumar Tiwary, Advocate
For the Respondent/s : Ms. Somali Acharya, Advocate
Mr. Ajay Kumar Thakur, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date :09-04-2026

The instant criminal revision petition has been preferred by the petitioner against the order dated 24.12.2024 passed by the learned Principal Judge, Family Court, Madhubani in Miscellaneous Case No. 115 of 2015 whereby and whereunder, the learned Family Court allowed the petition filed by the opposite party no. 2 under Section 127 of the Code of Criminal Procedure, 1973 (CrPC) and enhanced the maintenance amount allowed in favour of the opposite party no. 2 @ Rs. 1,500/- per month to Rs. 4,500/- per month from the date of presentation of the petition, i.e., from 21.08.2015. The petitioner was further directed to pay an amount of Rs. 2,500/- as litigation expenses along with the first installment.



2. Briefly stated, the facts of the case, as it appears from the record, are that the petitioner was married with the opposite party no. 2 on 09.06.2010 in Budhanath Shiv Temple in Bhagalpur district. The behaviour of opposite party no. 2 was eccentric and abnormal and she deserted the petitioner and started living in her parental home and after 17.02.2011 she did not return to her matrimonial home. Thereafter, the petitioner filed a matrimonial case bearing MS No. 24 of 2011 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights before the court of learned Principal Judge, Family Court, Khagaria on 16.04.2011. However, opposite party no. 2 had been suffering from Bipolar Affective Disorder even prior to her marriage which is a non-curable disease of the brain but this information was suppressed by her family members at the time of marriage and, thus, a fraud has been played upon the petitioner and they ruined his life. For this disease, the opposite party no. 2 remained under treatment at AIIMS, New Delhi. Therefore, the learned Principal Judge, Madhubani in the case filed by the petitioner ordered for medical examination of the opposite party no. 2. Accordingly, a report dated 09.01.2012 was submitted by the Jawahar Lal Nehru Medical College and Hospital, Bhagalpur before the learned Family Court observing



that the opposite party no. 2 had been suffering from incurable mental medical problem. Thereafter, the petitioner left with no choice, withdrew his petition filed for restitution of conjugal rights and order of withdrawal was passed on 23.01.2023. Subsequently, the petitioner filed a matrimonial case bearing No. 109 of 2013 for divorce in the Family Court, Khagaria, in which, the opposite party no. 2 has filed her written statement on 07.11.2023. An application for transfer of the said case was also filed and the said transfer petition was allowed and records of the divorce case of the petitioner was transferred to the Family Court, Madhubani. In the said case, the opposite party no. 2 filed second written statement on 20.08.2014. However, she lost interest in the said case, remained absent and non-represented on the dates fixed in the case. In the said case, the learned Family Court passed a decree of divorce on 20.06.2023 by way of detailed order. Meanwhile, during hearing of the anticipatory bail petition of the petitioner, the learned Single Judge of this Court, vide order dated 21.10.2014 passed in Criminal Misc. No. 38391 of 2014, directed the petitioner to deposit an amount of Rs. 750/- per month to the opposite party no. 2 as an interim maintenance amount.

It further transpires that the opposite party no. 2 filed



a maintenance case bearing MR No. 26 of 2011 before the learned Principal Judge, Family Court, Madhubani on 03.03.2011. However, the maintenance case ended in compromise and a compromise petition was filed on 15.02.2012 wherein this petitioner, who was opposite party before the learned Family Court, agreed to pay his wife a sum of Rs. 1,500/- per month as maintenance amount as per the agreed terms. Consequently, an order dated 15.02.2012 was passed by the learned Family Court holding that the maintenance case was disposed of as per the terms of settlement and the petitioner therein also agreed to withdraw the criminal complaint case bearing No. 246 of 2011, which was filed against the husband, the petitioner herein. It further transpires that the opposite party no. 2 then filed a miscellaneous case bearing No. 115 of 2015 under Section 127 of CrPC before the court of learned Principal Judge, Family Court, Madhubani for enhancement of the maintenance amount. The petitioner as opposite party filed his written statement in the said case. The learned Family Court allowed the said miscellaneous case filed by the opposite party no. 2 and enhanced the maintenance amount from Rs. 1,500/- to Rs. 4,500/- per month. Against this order, the petitioner has approached this Court by filing the present revision petition.



3. Learned counsel appearing on behalf of the petitioner submitted that the order of the learned Family Court is completely illegal and erroneous in the facts and circumstances. The impugned order dated 24.12.2024 is neither sustainable on facts or in law. The learned Family Court has failed to appreciate the fact that once an order for maintenance has been passed based on compromise between the parties, there was no scope for enhancement of the same on the application being filed on behalf of opposite party no. 2. Learned counsel further submitted that the order impugned is not supported with reasons and nothing has been brought on record to point out the circumstances which have changed and necessitated the filing of the miscellaneous case. The miscellaneous case for enhancing the maintenance amount has been brought on record within three years of compromise order in the maintenance case but even this fact was overlooked by the learned Family Court. Learned counsel further submitted that the learned Family Court has also not considered the fact that in terms of compromise, the opposite party no. 2 was supposed to drop all criminal proceedings against the petitioner but she has failed to do so and has now filed the miscellaneous case only to harass the petitioner. Learned counsel further submitted that the order of



maintenance has been passed without any documentary evidence as based solely on the deposition of the opposite party no. 2. Learned counsel further submitted that the opposite party no. 2, after filing the case for enhancing of maintenance amount, adduced her evidence after passage of 11 years from the date of passing of the first maintenance order on 15.02.2012. The petitioner was not granted any time for examination of witnesses and most of the proceeding took place during the period of Covid-19. Learned counsel further submitted that the order for enhancement of maintenance amount has been passed against the guidelines framed by the Hon'ble Supreme Court in the case of *Rajnish vs. Neha & Anr., (2021) 2 SCC 324*. Learned counsel further submitted that the learned Family Court has not even considered the fact that the petitioner is merely a casual labourer earning only Rs. 5,000/- per month, still the maintenance amount has been enhanced to Rs. 4,500/- per month without any reason. The learned Family Court has also not considered the fact that marriage of both the parties stood dissolved by the orders of a competent court on the ground of incurable mental disease of the opposite party no. 2 and the same has been discussed in detail but the learned Family Court showed undue haste and made miscalculation in modifying the



said amount. The order for enhancement of maintenance amount was passed without any logic and reason, more so, without considering the fact that the petitioner is a poor person. Learned counsel further submitted that the whole life of the petitioner has been ruined as the family members of the opposite party no. 2 has suppressed the fact about incurable mental disease of the opposite party no. 2. Learned counsel further submitted that the learned Family Court has not considered the circumstances or whether the needs of recipient have increased due to inflation, medical expenses or education of children. The learned Family Court has also not considered the fact that there is no improvement in the capacity of the petitioner to make more payment. The learned counsel further submitted that the enhancement of amount must be strictly aligned with specific provisions of relevant legislation and principles of fairness but this was not considered by the learned Family Court.

4. In support of his case, learned counsel for the petitioner relied on the decision of the High Court of Bombay at Aurangabad in the case of *Shaikh Sadiq Shaikh Rahim vs. Shabanabi S. Ali and Others, 2009 0 Supreme (Bom) 1451*, wherein on account of non-consideration of income of the petitioner, enhancement of maintenance amount was held to be



bad. Similarly, in the case of ***Sayantani Ghosh Vs. Sukesh Ranjan Koley (RVW 158 of 2023, decided on 10.08.2023 by the learned Single Judge of the High Court of Calcutta)***, wherein finding that petitioner has neither mentioned in the application for enhancement nor in the revisional application filed in the High Court with regard to any change of circumstances for which the alimony *pendente lite* was required to be enhanced, the learned Single Judge of Calcutta High Court has dismissed the application filed by the petitioner for review of the order by which the High Court did not find any reason to interfere with the order of the learned District Judge dismissing the application for enhancement of maintenance *pendent lite*. Learned counsel next relied on the decision of Calcutta High Court in the case of ***Manisha Kedia Vs. Manoj Kumar Kedia, 2024 0 Supreme (Cal) 177***, wherein the Calcutta High Court held that while fixing amount of maintenance, the Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay etc. Thus, the learned counsel submitted that as the learned Family Court failed to take into consideration the facts and circumstances, the impugned order could not be sustained and the same needs to be set aside.

5. Learned counsel appearing on behalf of opposite



party no. 2 vehemently contended that there is no infirmity in the impugned order and the same is proper and correct. Learned counsel further submitted that the order for grant of maintenance amount was initially passed on 15.02.2012. Though the said order was based on compromise of the parties, the same could not preclude the opposite party no. 2 from approaching the Family Court for enhancement of the maintenance amount considering the increase in the cost of living. Further, the order for enhancement of maintenance amount came to be passed only on 24.12.2024, i.e., after passage of more than 09 years. Learned counsel further submitted that the opposite party no. 2 filed her affidavit regarding her assets and liabilities whereas the petitioner did not file any affidavit of assets and liabilities and further failed to lead any evidence. Learned counsel further submitted that the petitioner did not even cross-examine the witness of opposite party no. 2 and at this stage, it is not proper for him to challenge the order on new facts.

6. Learned counsel for the opposite party no. 2 relied on the decision in the case of *Manish Jain Vs. Akanksha Jain*, *AIR 2017 SC 1640*, wherein it has been held that an order for maintenance *pendente lite* or for costs of the proceedings is



conditional on the circumstance that the wife or husband who makes a claim for the same has no independent income sufficient for her or his support or to meet the necessary expenses of the proceedings. In the present case, nothing was brought on record to show that the opposite party no. 2 was having any independent source of income. Next case relied on by the learned counsel for the opposite no. 2 is ***Shamima Farooqui Vs. Shahid Khan, AIR 2015 SC 2025***, wherein the Hon'ble Supreme Court observed that in today's world, it is extremely difficult to conceive that a woman of her status would be in a position to manage with Rs.2,000/- per month. It has been stressed that it can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that woman suffers when she is compelled to leave her matrimonial home. It has further been held that the statute commands there has to be some acceptable arrangements so that she can sustain herself. The Hon'ble Supreme Court quoted with his approval a passage from the judgment rendered by the Delhi High Court in the case of ***Chander Prakash Bodhraj v. Shila Rani Chander Prakash, AIR 1968 Delhi 174***, which reads as under:

“An able-bodied young man has to be



presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable, for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him.”

7. Thus, the learned counsel submitted that as the petitioner husband did not disclose by way of affidavit his assets and liabilities, the presumption taken against him is permissible. Learned counsel also referred to the decision of Bombay High Court in the case of ***Dattatraya Bhaurao Manekar Vs. Anupreeta Dattatraya Manekar, 2023 Supreme (Bom) 980***, wherein finding that the petitioner did not examine himself to rebut the oral evidence of respondent, the High Court assumed that the petitioner might have chosen not to step into the witness box to avoid uncomfortable aspects of the matter. Thus, the learned counsel submits that there is no infirmity in the impugned order and the same does not require any interference



of this Court.

8. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

9. Section 127 of the CrPC reads as under:

“127. Alteration in allowance.—[(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.]

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent Civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that—

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the date of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order,—

(i) in the case where such sum was paid before such order, from the date on which such order was made;

(ii) in any other case, from the date of expiry of the period, if any, for which



maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to [maintenance or interim maintenance, as the case may be,] after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a [monthly allowance for the maintenance and interim maintenance or any of them has been ordered] to be paid under section 125, the Civil Court shall take into account the sum which has been paid to, or recovered by, such person [as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of] the said order.”

10. Thus, the aforesaid provision provides alteration in allowance of maintenance. The said provision also makes it clear that if the woman, who has been divorced has not remarried, but has not voluntarily surrendered her rights to maintenance, will continue to receive the maintenance. Therefore, the submission of the learned counsel for the petitioner, regarding opposite party no. 2 after being divorced and for this reason not entitled for any maintenance from the petitioner, is not sustainable, as nothing has come on record to show that opposite party no. 2 has remarried or has surrendered her rights to the maintenance.

11. So far as the submission of the learned counsel for



the petitioner regarding the grant of maintenance amount to the tune of Rs. 1,500/- on the basis of compromise entered into between the parties is concerned, it is made clear that it was not in the form of one time settlement. When the matter was compromised and the petitioner agreed to make payment of Rs. 1,500/- per month to the opposite party no. 2, the same does not mean the opposite party no. 2 was forbidden from seeking enhancement of the maintenance amount for all times to come. As it was not a one time settlement and opposite party no. 2 was allowed maintenance every month, implicit in it was intention of the parties that in future, there would be scope for enhancement of maintenance amount if need so arose. Merely because the initial maintenance amount was ordered on the basis of compromise, I do not think the gates for future enhancement has been closed for all purposes for opposite party no. 2. Therefore, even on this account, I do not find any merit in the submission of the learned counsel for the petitioner.

12. So far as contention of the petitioner about opposite party no. 2 not showing any change in circumstances is concerned, I do not attach much significance to it considering the fact that the initial order of maintenance was passed in the year 2012 and subsequent order came to be passed in the year



2024 and the passage of this period in itself is sufficient to make an assumption by the Court that cost of living has risen and inflation has made the value of money lesser each day. Therefore, even if the opposite party no. 2 might not have deposed in so many words about her condition and her claim was not based on documentary evidence, the same could not be used to deny her claim. Moreover, the petitioner has failed to cross-examine the witness/opposite party no.2 and, therefore, cannot take advantage of his own wrong.

13. Further, on the quantum of enhancement, I do not think it could be said to be unreasonable as the first order for maintenance was passed on 14.02.2012 and it was to the tune of Rs. 1,500/- per month. More than 12 years thereafter the order for enhancement of maintenance amount has been passed and the amount has been enhanced to Rs. 4,500/- per month. This amount is based on the claim of the opposite party no. 2 who deposed herself as her only witness as it appears from the impugned order. Despite opportunity, the petitioner neither cross-examined the witness nor adduced his own evidence. Though, he filed his written statement/objection claiming his salary to be Rs. 5,000/- per month. If the petitioner failed to contest the case properly before the learned Family Court, it is



not the fault of opposite party no. 2 and she cannot be penalized for the same. If the petitioner was in a position to make payment of Rs. 1,500/- per month in the year 2012, natural inference is that his income must also have increased during this period and considering the prevailing circumstances, rate of inflation and increase in cost of living, ordering the petitioner to make payment of Rs. 4,500/- per month as enhancement amount to the opposite party no. 2 could not be said to be unreasonable.

14. However, a blanket order of payment of Rs. 4,500/- per month has been passed from the date of presentation of the petition for enhancement. It has been claimed by the petitioner that in the case for enhancement, the opposite party no. 2 adduced her evidence after 08 years of filing of the petition and the same has not been denied by the opposite party no. 2. Therefore, it would not be proper to direct the petitioner to make payment @ Rs. 4,500/- per month from the date of filing of the petitioner in the year 2015. On this short point, I am inclined to interfere with the impugned order and the part of impugned order dated 24.12.2024 is set aside to the extent of making payment from the date of filing of the enhancement petition and thus modifying the impugned order. The parties are directed to appear before the learned Principal Judge, Family



Court, Madhubani and the learned Family Court is directed to pass a fresh order after giving due opportunity of hearing to the parties for calculation of quantum of maintenance amount from 21.08.2015 till the passing of the order, i.e., 24.12.2024.

15. It also transpires from the impugned order that the petitioner is a defaulter and has accumulated arrear amount by not making the payment regularly and hence, the learned Family Court is directed to ensure that the petitioner makes the payment of arrear amount before proceeding further in the matter. It goes without saying that petitioner would keep on making payment of the amount @ Rs. 4,500/- w.e.f. the date of impugned order, i.e., 24.12.2024.

16. Accordingly, the present revision petition stands disposed of.

17. Pending application(s), if any, also stands disposed of.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	09.02.2026
Uploading Date	
Transmission Date	

