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IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Revision No.512 of 2023

Amit Kumar Kachhap, son of late Maghi Kachhap, resident of Qrt. No. K-2/196, Tube Colony Baridih, P.O. Baridih, P.S. Sidhgora, Town Jamshedpur, District Singhbhum East .... **Petitioner**

Versus

Sangeeta Toppo, wife of Amit Kumar Kachhap, Daughter of Shiv Shankar Oraon, at present residing at Village Nagri, P.O. Bukru, P.S. Kanke, District Ranchi .... **Opposite Party**

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. Indrajit Sinha, Advocate
Mr. Vipul Poddar, Advocate
For the State : Mr. Anil Kumar Sinha, Advocate

C.A.V. on: 04/01/2024 **Pronounced on:02/02/2024**

1. This Criminal Revision has been preferred against the impugned judgment dated 20.04.2023 passed by the learned Principal Judge, Family Court, Ranchi in Original Maintenance Case No.241 of 2017 filed under Section 125 of the Code of Criminal Procedure, whereby the learned Court below had allowed the maintenance application and directed the petitioner to pay maintenance amount of Rs.15,000/- per month to the opposite party from the date of application i.e. 30.10.2017.

2. The brief facts leading to this Criminal Revision are that the maintenance application under Section 125 of the Code of Criminal Procedure was filed on behalf of the opposite party-wife, namely, Sangeeta Toppo against her husband Amit Kumar Kachhap with these allegations that she was married with Amit Kumar Kachhap on 01.12.2014 at Argora, Ranchi **according to their custom, rites, ritual and usages as both the parties are belonging to Sarna community**. After marriage, the opposite party-wife was taken to her in-law's house at Baridih and from the very next

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day the demand of car, fridge, LED TV etc. was began to raise. The petitioner-husband and his family members also began to create pressure to fulfill the said demand. The petitioner-husband began to avoid the opposite party-wife manhandled her and neglected her on petty matters. The petitioner-husband having administered himself with alcohol and used to abuse the opposite party-wife and also manhandled her. The petitioner-husband is also having relation with one lady Poonam Kumari, who was introduced by him as the friend of his sister Rashmi Kachhap but, later on, the opposite party-wife came to know that the illicit relationship developed between her husband and lady Poonam Kumari and he has been depriving the opposite party-wife of the love, care and protection and maintenance as well, in such circumstances, the opposite party-wife was compelled to live in misery. The opposite party-wife is unemployed tribal lady. The petitioner-husband is employeed in Indian Railway and works as a Loco Pilot, he is getting salary of Rs.60,000/- per month. He also runs business of Marriage Hall at Baradih, from which, he also gets income of Rs.1,00,000/- per month. He has also 12 shops, which are given on rent and, from which, he earns Rs.60,000/- per month. In view of the above, prayed to allow the maintenance amount of Rs.50,000/- per month.

3. On behalf of the petitioner-husband, the reply of show cause was filed, in which, he stated that indeed both parties belong to the scheduled tribe being Oraon community and the provision of Hindu Marriage Act, 1955 is not applicable. **Both parties are governed by the custom and usages prevalent in their community**. After solemnization of marriage, the applicant was taken to Jamshedpur to the matrimonial house, where she stayed for one week but on the request of *mausa* and *mausi* of the applicant

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she again went to Ranchi at the hosue of her *mausa* and *mausi*, who were acting as guardian of her. The applicant is post-graduate. The *mausa* and *mausi* of the applicant are instrumentally intervening in her day-to-day affair. On 23.02.2015, she was taken by her *mausa* and *mausi* to Ranchi on the assurance that she would come back within 15 days, but to the utter surprise of the petitioner husband, she neither came to the matrimonial house nor agreed to come back in spite of the repeated request made by the husband. The applicant, who had conceived during her marriage at the matrimonial house had also got abortion without consent taken by the opposite party and, later on, the petitioner-husband came to know that she got the pregnancy terminated without his consent during her stay at the house of her *mausa* and *mausi*. The *mausa* and *mausi* of the applicant were also interested for the second marriage of the opposite party as their custom permits for the same. The entire ornament of the petitioner are with the opposite party. It was applicant, who had left the society of the husband without any reasonable cause. The petitioner-husband waited for more than two years and divorced the applicant on 17.07.2017 and left her to marry according to her choice. As such, the applicant is not entitled to maintenance amount. In view of the above, prayed to dismiss the maintenance application.

4. On behalf of the applicant in oral evidence examined **A.W.-1, Sangeeta Toppo and A.W.-2, Gouri Devi**. In documentary evidence on behalf of the applicant filed the photocopy of the anticipatory bail application and the order dated 19.12.2018 passed in Complaint Case No.202 of 2017 filed under Section 498-A, 420, 406, 315, 506/34 of the Indian Penal code and copy of the FIR under Section 498-A, 420, 406, 315,

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506/34 of the Indian Penal Code.

5. On behalf of the petitioner-husband examined **O.P.W.-1, Poonam Kumari; O.P.W.-2, Amit Kumar Kachhap and; O.P.W.-3, Kisto Kachhap**. In documentary evidence affidavit was also filed in regard to the assets and liability in compliance of the judgment passed by the Hon'ble Apex Court in the case of ***Rajnesh Vs. Neha*** reported in ***(2021) 2 SCC 324***.

6. The learned Trial Court after hearing the rival submissions of both parties, passed the impugned judgment on 20.04.2023 and allowed the maintenance application directed the petitioner Amit Kumar Kachhap to pay maintenance amount of Rs.15,000/- per month to the opposite party-wife.

7. Aggrieved from the impugned judgment, this Criminal Revision has been directed on behalf of the petitioner husband on the ground that the impugned order passed by the learned Court below is bad in the eyes of law as the same is based on erroneous findings. The learned trial Court has not applied the judicial mind while appreciating the evidence on record and has come to the wrong conclusion on the basis of wrong appreciation of the evidence. The learned Court below has not gone through the declaration made by both the parties in their affidavit in compliance of the judgment passed by the Hon'ble Apex Court in the case of ***Rajnesh Vs. Neha*** (supra). The learned Court below did not appreciate the evidence that the applicant had left the company of the petitioner husband without any reasonable cause, as such, she was not entitled to maintenance in view of Section 125(4) of the Code of Criminal Procedure. In view of the above, prayed to allow this Criminal Revision and set aside the impugned order.

8. I have heard the learned counsel for the petitioner and learned counsel for the opposite party and perused the materials available on record.

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9. For the disposal of this Criminal Revision, following points of determination is being framed:

> *"(i) Whether the opposite party-wife has left the society of her husband without any reasonable cause, if so its effect?*
> *(ii) Whether the quantum of maintenance is disproportionate in view of the income and assets of the petitioner-husband?"*

10. On the first point of determination, on behalf of the opposite party-wife has examined **A.W.-1, Sangeeta Toppo herself**, in her examination-in-chief, says that she was married with Amit Kumar Kachhap on 01.12.2014. The demand of LED TV and vehicle was made and for non-fulfillment of the same, she was subjected to cruelty and under that circumstances, she left the matrimonial house. Her husband is also having illicit relation with one lady, namely, Poonam Kumari, since then, she has been living at her parental house. In cross-examination, this witness says that **she lived in her matrimonial house for a total period of one month. During that period, she did not file any complaint in regard to the torture made for any demand of dowry even no panchayat was held. She does not want to reside with her husband because he has illicit relation with another woman**. Her husband has also filed a case against her in regard to the theft, in which, she got the anticipatory bail. She was never conceived. No treatment to that effect was ever given to her and no abortion was done by her. Now she does not want to reside with her husband since he has filed two cases against her one for theft and another for divorce. All her jewelry was left by her to the matrimonial house.

10.1 A.W.-2, Gouri Devi, who is the mother of the applicant, in her examination-in-chief, says that her daughter was married on 01.12.2014 with Amit Kachhap at Argora, Ranchi. After one month of marriage, her daughter

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was subjected to cruelty for demand of dowry. In cross-examination, this witness says that now her daughter resides with her. She does not want to re-marry to her daughter. It is wrong to say that her daughter gone to re-marry.

11. On behalf of the opposite party in oral evidence examined **O.P.W.-1, Poonam Kumari**. This witness, in her examination-in-chief says that **Amit Kumar Kachhap is her younger brother. The sister of Amit Kumar Kachhap is her friend**. The wife of Amit Kumar Kachhap had left the in-law's house on account of her own will. She had made allegation to her in regard to the illicit relation, which is wrong. **It is nothing but the product of her dirty mind. She has also filed a suit for defamation against her, in which, she has not appeared therein, the photocopy of said case is Exhibit-A. Sangeeta Toppo was also pregnant and she underwent the treatment of Dr. Indu Chouhan.** She said that **Amit Kachhap wanted to bring her back to the matrimonial house but she does not want to came back**. In cross-examination, this witness says that her house is at the distance of 16 kilometers from the house of Amit Kumar Kachhap. She occasionally come to the house of Amit Kachhap. It is wrong to say that she had illicit relation with Amit Kumar Kachhap and with this reason Sangeeta Toppo left the matrimonial house.

11.1 O.P.W.-2, Amit Kumar Kachhap, in his examination-in-chief, says that his wife resided with him in the matrimonial house for one month. She also became pregnant and **underwent treatment of Dr. Indu Chouhan and the pregnancy was found 'positive'. On 22.02.2015, she went along with her guardian and when she came back he know that she got the pregnancy terminated. The prescription of the treatment was given by Dr. Indu Chouhan is Exhibit-Y/1. He wanted to bring back his wife but**

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his wife did not want to come and she each time insulted him. He has also filed a Criminal Case against his wife in regard to the jewelry, which she had taken with her from the matrimonial house. **In this case, six times mediation was scheduled to be held and each time his wife made demand of Rs.75 lakhs as life time alimony and refused to reside with him**. He has given notice to his wife for divorce and the case for divorce was filed bearing Case No.01 of 2018, which is also pending. **This allegation of his wife is quite false and wrong that he has illicit relation with Poonam Kumari. He is still willing to bring back his wife with him**. In cross-examination, this witness says that he has filed the criminal case against his wife in Jamshedpur and also **divorce petition No.1 of 2018 in Jamshedpur, the same is transferred to Ranchi** and he is not aware whether the suit has been dismissed. It is wrong to say that he made any demand of dowry and he used to manhandle her after having being intoxicant. It is also wrong to say that he has illicit relation with one Poonam Kumari and the same was seen by the applicant herself. **Socially, he has given divorce to his wife but no divorce has been decreed by any competent Court. Still, he wants to keep his wife with him.**

11.2 O.P.W.-3, Kishto Kachhap, in his examination-in-chief, says that he is resident of Ranchi. **He is familiar with both the parties**. He is cousin brother of Amit Kachhap. **Sangeeta Toppo has got remarried, with whom, he is not aware.** In Oraon Community, a woman or a man cannot re-marry without any social divorce. Sangeeta Toppo resides with her mother. In cross-examination, this witness says that it is wrong to say that being the cousin brother of Amit Kachhap, he is giving false evidence.

12. On behalf of the applicant **Sangeeta Toppo P.W.-1**, in her deposition

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statement, stated that she lived in her matrimonial house for one month. Demand of dowry was made and for non-fulfillment of the same, she was subjected to cruelty. Her husband also had the illicit relation with one Poonam Kumari, therefore, she left the matrimonial house and residing at her parental house. She does not want to reside with her husband in any condition. **She does not consider him to be her husband and she cannot live with him even for a single day.** During mediation, she made demand of Rs.75 lakhs from him.

13. P.W.-2, Gouri Devi, who is the mother of the applicant also says that her daughter lived in her matrimonial house well for one month, thereafter, the members of in-law's house began to torture her. They used to say that she is having bad character. Her daughter is residing with her. She denies this suggestion that her daughter has re-married.

14. To the contrary, on behalf of the petitioner, in evidence examined **O.P.W.-1, Poonam Devi**. This witness has stated that **Amit Kumar Kachhap is her younger brother. He played in her lap in his childhood. She is friend of the sister of Amit Kumar Kachhap. The wife of Amit Kumar Kachhap had made false allegation in regard to the illicit relation with Amit Kumar Kachhap, for the same, she has filed the case for defamation and copy of the same is annexed as Annexure-A.** During cross-examination, on behalf of the applicant no contrary conclusion could be drawn from this witness. **O.P.W.-2, Amit Kumar Kachhap** himself says that his wife left the matrimonial house of her own will. She left her matrimonial home only after one month. She also became pregnant. She underwent treatment of Dr. Indu Chouhan, in which, her pregnancy was found 'positive' and she went along with her guardian *mausa* and *mausi* and

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got the pregnancy terminated without his consent. He files the prescription of Dr. Indu Chouhan, which is marked as Exhibit-Y/1. He also says that six times mediation took place but his wife refused to live with him and she made demand of Rs.75 lakhs. He has still ready to bring her back with him even if he has socially divorced her and divorce suit has also filed by him but his wife has left his society without any reasonable cause. **From the very prescription of Dr. Indu Chouhan, which has been filed on behalf of the petitioner-husband, it is found that it is dated 21.02.2015, in which, Sangeeta Kachhap, wife of Amit Kumar Kachhap, 27 years old resident of Baradih is shown patient and she is also shown pregnant of two and half months. The doctor has also prescribed her certain tablets on account of her general bodyache. This prescription issued by Dr. Indu Chouhan, in which, the pregnancy is also shown 'positive' belies the statement of applicant Sangeeta Toppo, who has flatly refused that she never became pregnant. She never underwent treatment of Dr. Indu Chouhan and pregnancy was never terminated.**

15. O.P.W.-3, Kishto Kachhap, the independent witness, who is cousin brother of Amit Kumar Kachhap has stated that **Amit Kumar Kachhap went to bring his wife but she did not come back. Sangeeta Toppo has also re-married though he is not aware that with whom she has re-married.**

16. In view of the overall evidence adduced on behalf of both the parties, it is found that the **respondent-applicant has been residing aloof from the husband without any reasonable cause. Accordingly, this point of determination is decided in favour of the petitioner-husband and against the opposite party-wife. In consequence thereof, in view of**

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Section 125 (4) of the Code of Criminal Procedure, 1973 she is not entitled to any amount of maintenance. Section 125(4) of the **Code of Criminal Procedure**, **1973** reads as under:

> *"(4) No wife shall be entitled to receive an [5][allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent."*

17. So far as the **second point of determination** i.e. whether the quantum of maintenance is disproportionate in view of the income and assets of the petitioner-husband is concerned, since she is not entitled for any amount of maintenance, no need to decide this point of determination.

18. In view of the above, the impugned order passed by the learned court below needs interference and this Criminal Revision deserves to be allowed.

19. Accordingly, this Criminal Revision is hereby **allowed** and the order passed by the learned Court below is **set aside**.

20. Let a copy of this order be communicated to the learned Court concerned through 'FAX'

(Subhash Chand, J.)

Madhav/- **A.F.R.**