

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No.535 of 2022**

Niraj Kathuria Petitioner
Versus
1.The State of Jharkhand
2.Palak Agarwal Opposite Parties

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. Ajit Kumar, Sr. Advocate
For the State : Mr. Shailendra Kumar Tiwari, Spl. P.P.
For the O.P. No.2 : Mr. Lukesh Kumar, Advocate

C.A.V. on 27.09.2023

Pronounced on 13.10.2023

1. Heard learned senior counsel for the petitioner, learned counsel for the State and learned counsel for the Opposite Party No.2.
2. This criminal revision has been preferred against the order dated 18th April, 2022 passed by the learned Principal Judge, Family Court, Dhanbad in Original Maintenance Case No.505 of 2021, whereby the petitioner has been directed to pay Rs.40,000/- per month as maintenance to the Opposite Party No.2 from the date of application i.e., 4th October, 2021. The petitioner was further directed to make payment of all arrear amount within two months from the date of the order.
3. Brief facts of the maintenance case given on behalf of the wife (the O.P. No.2 in this case) are that marriage of the Opposite Party No.2 – Palak Agarwal was solemnized with Niraj Kathuria (the petitioner in this case) according to Hindu rites and rituals on 29th April, 2018 at Sonotel Hotel, Saraidhela Dhanbad. Since, thereafter, the spouse joined marital consortium in the house of the petitioner – Niraj Kathuria. After a short span of time, the

petitioner, his mother and married sisters began to show colour of dissatisfaction of the dowry articles on the ground that the dowry was not given befitting to the status of the petitioner. Since next date of marriage i.e., 30th April, 2018, the O.P. No.2 became eyesore in the matrimonial home. The entire building was put under CCTV camera surveillance and the cell phone of the O.P. No.2 was also taken into custody by the petitioner just to track the activity of the O.P. No.2. The petitioner – Niraj Kathuria is the habitual drunkard and he hobnobs with young girls to maintain his culture. He used to commit brutal marital sex by pinching teeth on the face of the O.P. No.2, brutally slapping her and used to injure her private parts and even wanted carnal sex with the O.P. No.2. The taunt, maltreatment was also given to the O.P. No.2 by the petitioner and his family members including kith and kins. Even free movement of the O.P. No.2 was also restricted in the matrimonial house. The fertile brain of the petitioner acted when he had installed spyware in the cell phone of the O.P. No.2 to track the conversation with her parents. All the personal documents of the O.P. No.2, such as, Aadhar, Voter ID and Pan Card were retained by the petitioner. The golden/silver jewellery of *Streedhan* was also taken in possession by the mother of the petitioner. The voracity of further asset grew up the petitioner and his mother demanding diamond studded platinum bracelet for the petitioner and diamond earrings for the mother and other family members apart from further cash amount of Rs.10 lakhs during

course of Baby Shower Ceremony. The inability was expressed by the O.P. No.2 but she was assaulted by the petitioner even during her pregnancy. In consequence, the female issue was born with liver infection, who expired within 22 months. The O.P. No.2 was forced and compelled to leave the matrimonial house on 3rd June, 2021 and presently residing at the house of her ailing parents. The O.P. No.2 was neither provided any maintenance nor the petitioner ever inquired in regard to the welfare of the O.P. No.2, since desertion by the petitioner. The O.P. No.2 has no means to survive as she faces acute financial stringency to arrange even her basic necessity of food, cloths and shelter apart from medical treatment. The petitioner is a man of high financial means and lead lavish life with number of cars/house/bungalow/asset/man force etc. He is a renowned business magnate in the coal city of Dhanbad and operating one coal/coke producing factory in the name of Shree Shakti Infrastructure, Parsai Govindpur, Dhanbad from which he fetches monthly income of Rs.5 lakhs and he is also operating another Coal/coke manufacturing plant in the name of Bhawani Coke Industry Barwadda, Dhanbad from which he also fetches monthly income of Rs.3.5 lacs. The petitioner has also monthly income of Rs.4 lacs from other sources and his total income is Rs.12.5 lacs. In view of the above, the O.P. No.2 prayed the maintenance amount of Rs.1,25,000/- from the petitioner.

- 4.** On behalf of the respondent (the petitioner herein), the objection was filed in which it was averred that it was the O.P. No.2, who

had treated the answering respondent with cruelty for which he had filed a divorce petition being O.S. No.536 of 2021 pending in the court of learned Additional Principal Judge, Family Court, Dhanbad. The copy of the same is annexed with the objection filed on behalf of the respondent. Mere looking into the documents and contents of the divorce petition, it would appear that the life of the respondent was made miserable by the O.P. No.2 leaving no scope for restoration of their married life. It was also denied that the O.P. No.2 ever brought any jewellery as stated in the petition or any dowry was ever demanded by the respondent or his family members. The O.P. No.2 has exaggerated the source of income of the respondent without any substantive proof. The respondent is the income tax assessee and his income from M/s. Shree Shakti Infrastructure of which he is one of partner is around 3 to 4 lac yearly for last two years. The documents would suggest that monthly income of the respondent from M/s. Shree Shakti Infrastructure is Rs.3.35 lacs. The income generated from M/s. Bhawani Coke Industry cannot be an income of the respondent. There is no other source of income except from M/s. Shree Shakti Infrastructure and also some income coming from dividends and interest. The respondent has to maintain his widow mother, her day to day medical expenses as she remain ill, out of his income. The O.P. No.2 is an educated lady and capable of earning herself.

5. On behalf of the O.P. No.2 in oral evidence examined P.W.-1

Palak Agarwal and P.W.-2 Sudhir Kumar Agarwal.

- 6. P.W.-1 Palak Agarwal** in her examination-in-chief reiterated all the averments made in her maintenance application and also contended that she is still ready and willing to reside with her husband. She has no source of income while the petitioner has income of Rs.14 to 15 lacs per month. In cross-examination, this witness says that she files income tax return and also showed her income therein. She also stated that if needed she could submit the Income Tax Return for last 4 years. At present she has no source of income. The jewellery which she stated to be given at the time of marriage as dowry by her parents, the same was ancestral one. She is not aware whether the same is entered in the balance sheet of her family member. The Divorce Petition No.536 of 2023 is pending in the court of Family Court against her.
- 7. P.W.-2 Sudhir Kumar Agarwal** is the father of the O.P. No.2 – Palak Agarwal. He in his examination-in-chief corroborated all the averments made by the O.P. No.2 in her maintenance application. In cross-examination, this witness says that he does business of coal and he is commission agent. He has been filing Income Tax Return for last 30 years and his daughter also files Income Tax Return but what is her income he has no knowledge.
- 8.** On behalf of the petitioner – Niraj Kathuria examined **R.W.-1 Aanand Agarwal**. This witness in his examination-in-chief says that on 29th April, 2018, Palak Agarwal was married with Niraj Kathuria. On account of torture caused by Palak Agarwal upon the

petitioner and his mother, the divorce petition was filed against her. Palak Agarwal files Income Tax Return. The Opposite Party has annual income of Rs.9 to 9.50 lacs. He has no concern with Bhawani Coke Industry. In cross-examination, this witness says that he has no knowledge what is the annual income of Opposite Party. He has no knowledge what are the assets of the Opposite Party.

9. R.W.-2 Niraj Kathuria in his examination-in-chief says that he is not the owner of Bhawani Coke Industries. He manufactures fly ash bricks and his factory is Shri Shakti Infrastructure in which he has one partner, whose name is Ankit Goenka. The only source of his income is Shri Shakti Infrastructure. He has also some income from the share trading as well. He further stated that his annual income is Rs.9,16,461/-. He files Income Tax Return and his ailing mother is also dependent upon him. After marriage, the differences arose between him and Palak Agarwal and he filed the divorce petition against her. In cross-examination, this witness says that in marriage card his address is shown Bhawani Coke Industry. His father died on 6th May, 2021. His father was the partner in Bhawani Coke Industry along with two other partners. Shakti Infrastructure is also the partnership firm. After death of his father, who carries the business of Bhawani Coke Industry, he has no knowledge. He has two cars, one is Ciaz and another is Hyundai Creta. It is wrong to say that he has affair with any women and with this reason he has filed the divorce petition.

- 10.** The learned Principal Judge, Family Court, Dhanbad after hearing the rival submissions of the learned counsel for the parties passed the impugned judgment on 18th April, 2022 directing the Opposite Party (the petitioner) to pay the amount of Rs.40,000/- per month from the date of filing of the application i.e., 4th October, 2021. The arrears of maintenance amount was also directed to be paid within two months from the date of order.
- 11.** Aggrieved from aforesaid judgment dated 18th April, 2022, this criminal revision has been preferred on behalf of the Niraj Kathuria on the ground that the impugned judgment passed by the learned Principal Judge, Family Court, Dhanbad is illegal. The Court has quantified the amount to be paid as Rs.40,000/- without taking into consideration the actual income of the petitioner and without taking into consideration the liabilities of the petitioner. The impugned judgment passed by the learned Family Court is based on perverse finding and the amount of maintenance awarded is not reasonable, realistic and is oppressive and unberable to the husband. The petitioner/husband is the sole earning member of his family after death of his father and his ailing mother is also dependent upon him. The annual income from M/s. Shri Shakti Infrastructure of which he is one of partner is around 3 to 4 lacs per annum for last two years. He has no concern with M/s. Bhawani Coke Industry and no income can be generated from there. The learned Family Court has not taken into consideration all these factors and reached on the erroneous conclusion

awarding the amount of Rs.40,000/- as maintenance to the wife/O.P. No.2. Hence, this criminal revision.

12. I have heard the learned senior counsel for the petitioner and learned Spl. P.P. for the State as well as learned counsel for the O.P. No.2. and perused the materials on record.

13. At the very outset, Mr. Ajit Kumar, learned senior counsel for the petitioner had contended that by way of this criminal revision, the petitioner has assailed the impugned judgment passed by the learned Family Court on the point of quantum of maintenance amount. It is further contended that the learned Family Court has assessed the monthly income of the petitioner/husband Rs.1.20 to 1.25 lacs per month which is gross income from Shri Shakti Infrastructure, a partnership firm, having 55 % share engaged in manufacturing of fly ash bricks and pay works while the net monthly income from the said partnership Firm is Rs.75,000/- to 80,000/- per month. This fact has been disclosed on behalf of the petitioner in the affidavit filed in support of the objection on behalf of the husband – Niraj Kathuria. In the affidavit which was filed in regard to assets and liabilities of the non-agrarian deponent i.e., Niraj Kathuria, it is shown that the petitioner –Niraj Kathuria has also taken loan on Shree Shakti Infrastructure about Rs.90 lacs. The unsecure loans on Shree Shakti Infrastructure is Rs.1,00,24,426.11/-, car loan is Rs.4,94,551/-, other unsecure loan is Rs.26,04,541/- and other loans are Rs.3,65,000/-. All these facts are disclosed in the ITR itself and are also shown on behalf

of the petitioner Niraj Kathuria under the head "G Assets (movable and Immovable) owned by the deponent".

14. The learned Family Court without taking into consideration all these facts had awarded the maintenance amount of Rs.40,000/- per month which is excessive and unbearable for the petitioner.

15. Per contra, learned Spl. P.P. and learned counsel for the O.P. No.2 opposed the contentions made by the learned senior counsel for the petitioner and contended that admittedly in Bhawani Coke Industry earlier there were three partners including the father of the petitioner, namely Purushotam Kumar Agarwal having 1/3rd share in the said partnership firm. After death of petitioner's father the said share was sold in favour of Mohan Lal Agarwal, who is also the relative of the petitioner and for the sale of the share in Bhawani Coke Industry, the petitioner has received a huge amount. Admittedly, the petitioner has also income from the dividend and interest also and he has several assets which are shown in his affidavit itself. So far as the income of the O.P. No.2 is concerned, she has no source of income though she was filing the Income Tax Return. The maintenance amount awarded by the learned Family Court bears no illegality and contended to dismiss this criminal revision.

16. The **object of Section 125 Cr.P.C. is the Social Justice and also to ensure the dignity of the individual as enshrined in the preamble of the Constitution of the India.**

17. The maintenance amount awarded by the Court must be

reasonable and realistic. **The court should avoid either of the two extremes (i). Maintenance awarded to the wife should neither be so extravagant which become oppressive and unbearable for the respondent/husband; and (ii). It should not be so meagre that it drives the wife to penury.**

The object behind right to maintenance is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, at the same time it should not be punishment to the other spouse.

18. In the case in hand, **as per admission of the O.P. No.2, she has also been filing Income Tax Return for last four years, though she has stated that she has no source of income. The same does not inspire the confidence of the Court that she has no source of income; while she has been filing Income Tax Return.** The O.P. No.2/wife has not disclosed her source of income. **It would also be relevant that O.P. No.2/wife is educated and professionally qualified has independent source of income or not; but the Court has the duty that income of the wife should be so sufficient to maintain the same standard of living as she was accustomed to in her matrimonial home.**

19. Simultaneously, the application of the husband also stands on a higher pedestal than the wife even if the wife is earning, it cannot operate as a bar from being awarded maintenance by the husband.

20. In the case in hand, though the wife has averred herself to be unpaid, yet has admitted that she has been filing Income Tax Return for last 4 years. So far as the income of the husband/petitioner in this criminal revision is concerned, **the petitioner – Niraj Kathuria has admitted that he is partner of Shree Shakti Infrastructure along with two other partners. He has also shown his gross income from the said firm, Rs.1.20 to 1.25 lacs per month; while the net income is shown Rs.75,000/- to 80,000/- per month in the affidavit filed in regard to affidavit file in regard to assets and liabilities of non-agrarian deponent under column “G Assets (movable and immovable) owned by the deponent”.** In the said affidavit his self-acquired property is shown and **he has also taken loan about Rs.90 lacs on Shree Shakti Infrastructure. The unsecure loans on Shree Shakti Infrastructure is Rs.1,00,24,426.11/-, car loan is Rs.4,94,551/-, other unsecure loan is Rs.26,04,541/- and other loans are 3,65,000/-.** All these facts are disclosed in **the ITR itself.** So far as the firm Bhawani Coke Industry is concerned, **initially the father of the petitioner was the partner of the same and after his death the said firm dissolved automatically. Nothing is on record that the petitioner became the partner in the reconstituted firm, rather it came in evidence that the uncle of the petitioner became partner of the reconstituted firm, namely,**

Bhawani Coke Industry. As such, the petitioner is fetching no income from Bhawani Coke Industry after death of his father since he did not become the partner of the reconstituted firm after dissolution of the same.

21. From the evidence on record, it is also found that the widow mother of the petitioner is also dependent upon him and **petitioner has also the liability to maintain his ailing mother.** The loan liabilities as stated by the petitioner on oath in the affidavit are not denied on behalf of the O.P. No.2/wife. **The learned Family Court did not take into consideration, the liabilities of the petitioner – Niraj Kathuria while fixing quantum of maintenance, which are evident from the documentary evidence on record.** The learned Family Court has assessed **the income of the petitioner Rs.1.20 lacs to Rs.1.25 lacs monthly from Shree Shakti Infrastructure which was the gross income of the petitioner, not the net income.** The learned Family Court has taken into account the landed property in the name of the petitioner at Pasari Barwa, Panduki and Mouza Amaghata totaling to Rs.28,46,529/-; **but there is nothing on record that from these properties the petitioner was fetching any income.**

22. Taking into consideration, the fact that the O.P. No.2/wife who is also filing income tax return, though no income has been disclosed by her and the net income of the petitioner from Shree Shakti Infrastructure which is Rs.75,000/- to 80,000/- per moth as

per ITR, his income from the dividend and interest, the liabilities of the petitioner in regard to loan taken on Shree Shakti Infrastructure and also the liability of his widow mother, it appears to this Court that the impugned judgment passed by the learned Family Court is based on perverse finding and the amount of maintenance awarded is not reasonable.

23. Certainly, it is moral duty of the husband to pay maintenance to her wife so that she may also reside in the same status as would have been in matrimonial house; but it does not mean to squeeze milk from the husband that the marriage becomes felony for the husband.

23.1 The Hon'ble Apex Court in the case of *Chandrashekar v. Swapnil* reported in *(2021) 12 SCC 624* at paragraphs 3, 5, 7 and 8 has held as under :

"3. In pursuance of the order passed by this Court, the appellant has filed IA No. 96711 of 2020 making a disclosure of his salary slips for the months of March 2016, March 2017, March 2018, March 2019 and for the period between January and July 2020. The recent salary slips of the appellant indicate that he has a gross salary of Rs 45,529. The deductions from the gross salary are on account of (i) professional tax, (ii) Employees Group Insurance Scheme, (iii) LIC policy, (iv) General Provident Fund, (v) Karnataka Government Insurance Department deduction, and (vi) house rent allowance. In addition, it appears that the appellant had obtained a loan for which recoveries at the rate of Rs 9325 per month are being made from his salary towards a total outstanding of Rs 3.26 lakhs. Net of deductions, the salary which is payable to the appellant works out to Rs 20,979 per month.

5. The principal submission which has been urged on behalf of the appellant by the learned counsel, Mr Chinmay Deshpande is that the appellant is employed as a First Division Assistant in the Department of Health and Family Welfare of the Government of Karnataka; his salary being what has been referred to above, the payment of an amount of Rs 20,000 by way of maintenance would leave the appellant with virtually no resources to meet the maintenance requirements of his family which presently consists of his spouse and two minor children.

After the divorce between the appellant and the second respondent, the second respondent got married again and has two children.

7. We are inclined to modify the order which has been passed by the Family Court and which has been affirmed by the High Court. This is for the reason that the appellant being an employee of the State Government, his salary slips for the relevant period which are available on the record can safely be relied upon as a true indicator of the income which he earns from his employment with the State. The deductions which are being suffered by the appellant from his salary are largely in the realm of statutory and compulsory deductions which are made from the monthly income. Apart from the statutory deductions, some amount is being deducted towards a loan outstanding which Mr Deshpande submits was obtained to meet the expenses incurred on the ailment of the mother of the appellant. The appellant has shown his bona fides by paying an amount of Rs 6.64 lakhs. He has made a disclosure of his salary slips. The net income being in the range indicated above, payment of Rs 20,000 per month to the first respondent will leave no resources to maintain his other two children and family. Hence, some scaling down is required. But an arrangement to provide maintenance to the first respondent until he completes the first degree course after High School will be necessary so that the first respondent becomes self-supporting and can live in dignity. Both the learned counsel have been fair and their approach to a human issue needs to be noticed and appreciated. They have truly performed the role of officers of the court.

8. The Family Court had directed the appellant to provide maintenance to the first respondent till he attains the age of majority. We are conscious of the fact that we are extending the period for maintenance in the terms indicated above. However, in issuing this direction, we have borne in mind two significant aspects : firstly, the maintenance payable by the appellant has been reduced from rupees twenty thousand per month to rupees ten thousand per month; and secondly the past arrears have been capped at the amount of Rs 6.64 lakhs which has already been paid. Hence, exercising our jurisdiction under Article 142 of the Constitution we are inclined to pass an order in the interest of justice to envisage that maintenance at the reduced rate of rupees ten thousand per month will be provided by the appellant to the first respondent until he completes his first degree course following upon the High School Board examinations."

24. The learned Family Court while assessing the amount of quantum of maintenance has failed to consider the liabilities of the petitioner and maintenance @ Rs.40,000/- was awarded by the learned Family Court is slightly on higher side.

25. In view of discussions as made hereinabove and the settled legal proposition of law as laid down by the Hon'ble Apex Court, the criminal revision is **partly allowed**. The judgment and order dated 18th April, 2022 passed by learned Principal Judge, Family Court, Dhanbad in Original Maintenance Case No.505 of 2021 is modified to the extent that the petitioner is directed to pay Rs.25,000/- per month from the date of application i.e., 4th October, 2021 and the rest of the directions as given by the learned Family Court shall remain same.

26. From order-sheet, it appears that the petitioner has already paid Rs.1,20,000/- towards the arrears of maintenance awarded by the learned Family Court and he is also paying Rs.20,000/- per month to the Opposite Party No.2 – Palak Agarwal in view of the order dated 18th July, 2022. The maintenance amount which has already been paid by the petitioner during pendency of this criminal revision shall be adjusted towards future payment of maintenance and arrears shall be payable within a period of four months from the date of this order.

27. Let a copy of this order be communicated to the court concerned.

(Subhash Chand, J.)

Jharkhand High Court, Ranchi
Dated, the 13th October, 2023.

Rohit / **A.F.R.**