

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1578 of 2019**

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

... .. Petitioner/s

Versus

1. The State of Bihar

2.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rabindra Kumar Choubey, Advocate
Ms. Minu Kmari, Advocate
For the Respondent/s : Mr. Sunil Kumar Pandey, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER**

5 06-03-2024 Heard learned advocate for the petitioner and learned
Additional Public Prosecutor for the State.

2. The instant revision is directed against an order dated 30.11.2019 passed by the Court of the Principal Judge, Family Court, Buxar in Misc. Case No.43 of 2019 arising out of Maintenance Case No.05(m) of 2013 filed by the applicant/opposite party/petitioner herein with a prayer to hold that the wife of the petitioner, opposite party no.2 herein is not entitled to maintenance. In view of the provision contained in Sub-section (5) of Section 125 of the Cr.P.C.

3. It is the case of the petitioner that the opposite party



no.2 filed a complaint against the present petitioner and her other matrimonial relations alleging commission of offence under Section 498A and other penal provisions. The said case ended in acquittal because the opposite party no.2 failed to bring home the charge against the petitioner and the other matrimonial relation.

4. It is contended on behalf of the petitioner that the opposite party no.2 in her evidence stated that she has been residing with a person namely, [REDACTED]. The said evidence of the opposite party no.2 was also corroborated by her mother. The present petitioner placed reliance on the said evidence adduced by the opposite party no.2 and corroborated by her mother to show that the opposite party no.2 has been residing with another person namely, [REDACTED] and staying together with [REDACTED] by the opposite party no.2 amounts to adultery within the meaning of Section 497 of the I.P.C. Therefore, she is not entitled to get any maintenance from the opposite party no.2.

5. The learned Principal Judge, Family Court, Buxar disposed of the said application which was registered as Misc. Case No.43 of 2019 holding inter-alia that the petitioner failed to prove any physical relationship between the opposite party no.2 and the said [REDACTED] even if it is admitted that the



opposite party no.2 has been residing with [REDACTED]

6. The aforesaid order is under challenge in the instant revision.

7. It is submitted by the learned advocate for the petitioner that adultery cannot be prove by direct evidence. This can be inferred from the surrounding circumstances and specific acts by a party. When it is admitted that the opposite party no.2 has been residing with another person namely, [REDACTED] and there is no evidence with regard to their nature of relationship. It is open for the Court to hold that the opposite party no.2 has been living an adulterous life.

8. In support of his contention he refers to a reported judgment of this Court in the case of *Bina Devi Vs. Lakhani Yadav* reported in *2019(1) PLJR 373* where a coordinate Bench held on the fact that the opposite party no.2/husband remarried with another lady, namely, Pyari Devi that the opposite party no.2 has been living as adulteries life with the said Pyari Devi because of the fact that during subsistence of first marriage nobody can solemnized second marriage.

9. In my considered view, the ratio of the judgment in *Bina Devi* (supra) is not applicable in the instant case because of the fact that in *Bina Devi* there was evidence that the husband



had solemnized the second marriage. However, in this case the petitioner failed to come forward with any evidence that the opposite party no.2 had married to one [REDACTED]

10. It is needless to say that adultery is the act in any type of consensual physical relationship with a person other than the spouse. An adulterous relationship is established between two individuals who are not married to each other. Since, the coordination is voluntary, it can also be termed as an extra marital affair or infidelity towards once partner. While the legal definition of adultery relates to the fact of having sexual relationship with a person other than the spouse, it is also regarded as one of the major reasons for denial of maintenance allowance to the wife and her divorce. It is true that it is difficult to have an eye witness to prove an illicit relationship. However, it can be prove indirectly by showing evidence that one of the parties to the marriage is living adulterous relationship with a person other than his spouse.

11. In the instant case, it is alleged by the petitioner that the opposite party admitted in her evidence in a case under Section 498A of the I.P.C. that she has been residing with one [REDACTED]. It is needless to say that evidence must be read as a whole. A solitary statement made in the evidence by one of the



parties cannot be picked up to put an imputation of illicit relationship on a lady. It is contended by the learned advocate for the petitioner that her mother also admitted that [REDACTED] has been residing with [REDACTED].

12. The learned advocate on behalf of the petitioner purposefully omitted the next lines of the deposition that Israil Haque is the friend of the father of [REDACTED]. [REDACTED] is aged about 60 years. Therefore, if residing in a house of the fathers friend amounts to adultery they are cannot be any social bounding in the society and if this Court is persuaded to hold that staying in the house of a old man of different religion by a married lady amounts to adultery than the entire social relation between man and man, man and women is to be looked into only in terms of sexual relationship. No other relationship like affection, love, fellow feeling, affection towards the friends daughter, affection towards friends son, affection and normal friendly relationship with friends wife, between the wives of two friends are to be regarded in terms of sexual relationship.

13. Alas! this Court is not in a position to consider all relationship in terms of sexual relationship. A lady who has been left by her husband takes shelter in the house of father's friend. The petitioner has raised question as to why the lady is living



with his fathers friend especially when there is maternal uncle in Buxar. This cannot be a ground to hold that the opposite party no.2 has physical relationship which amounts to adultery with one [REDACTED]

14. The instant revision has been filed by the petitioner and the contention of the instant petition is absolutely perverse, if not obnoxious. Therefore, the instant revision is dismissed with cost of Rs.20,000/- to be paid to the opposite party no.2.

(Bibek Chaudhuri, J)

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