



THE HIGH COURT OF SIKKIM AT GANGTOK

J U D G M E N T

S.B. RP (FAM. CT.) No. 02 of 2013

Shri Bhawani Shankar Dahal,
S/o Shri Kharananda Dahal,
R/o Amba Busty,
P.O. Mamring, Pakyong,
East Sikkim.

.... **Petitioner/ Non-applicant.**

- versus -

1. Smt. Ganga Maya Dahal,
W/o Bhawani Shankar Dahal,
R/o Amba Busty,
P.O. Mamring, Pakyong,
East Sikkim.
2. Miss Priyanka Dahal,
Aged about 6 years,
D/o Bhawani Shankar Dahal,
R/o Amba Busty,
P.O. Mamring, Pakyong,
East Sikkim.

.... **Respondents/ Applicants.**

CORAM

**HON'BLE THE CHIEF JUSTICE
MR. JUSTICE N. K. JAIN**

Date of Judgment : 09.05.2014



For Petitioner : Mr. Sudesh Joshi, Advocate
(Legal Aid Counsel)

For Respondents : None for respondents.

Jain, CJ (Oral).

Heard learned counsel for the petitioner. None is present for the respondents, despite service of notice upon them.

2. The petitioner-husband has preferred this Revision Petition, under Section 19(4) of the Family Courts Act, 1984, against the order dated 20.07.2013 passed by Judge, Family Court, East and North Sikkim at Gangtok in Family Court (Crl.) Case No. 18 of 2012, whereby while allowing an application for maintenance under Section 125 of the Code of Criminal Procedure, 1973 (for short, Cr. P.C.) filed by applicants/respondents, it was directed that husband-petitioner shall pay Rs.6000/- (Rupees six thousand) per month towards maintenance to respondents.

3. Briefly stated, the facts of the case are that applicants/respondents filed an application for maintenance under Section 125 of Cr. P.C. before the Family Court for



grant of maintenance of Rs.12,000/- (Rupees twelve thousand) per month. It was stated in the application that applicant was married with non-applicant on 24.01.2006 and from their wedlock, a daughter, namely Priyanka Dahal, petitioner No. 2, was born on 24.08.2006. The applicant was serving in Sikkim Time Corporation, Deorali, Gangtok, but due to her ill-health and eye problem she submitted her resignation on 23.10.2009. The applicant No. 1 and non-applicant, both came to Turung, South Sikkim in January, 2010 along with their minor daughter and stayed there in the house of the elder brother of the applicant No. 1 till March, 2010, for constructing protective wall and planning to construct a house there on a plot of land gifted by father of the applicant, which was registered in the name of the applicant. It was further alleged that the non-applicant alone desired to come back to Amba with an ill-motive to remarry another woman, on collecting a huge amount to be received from Government of Sikkim for sale/surrender of a plot of ancestral land of the non-applicant. The applicant did not allow the respondent to come alone, but non-applicant did not agree and started harassing the applicant by giving physical and mental torture, forcing her to go back to



Turung. The non-applicant/husband started slapping, kicking and mercilessly assaulting the petitioner with firewood, despite, that the applicant was pregnant during the said period. The non-applicant forced the applicant to give divorce, so he may remarry another woman and also told the applicant that he would kill her if she is not willing to give divorce to him. In these circumstances, the applicant raised an objection in the office of Sub-Divisional Magistrate, Pakyong, East Sikkim to the effect that the whole amount towards the cost of the ancestral landed property of the non-applicant should not be given to him. It was further alleged that in the morning of 23.06.2010, the non-applicant assaulted the applicant with folded hand on her back and with a rice-cooker at her stomach, resulting in miscarriage of applicant. She was admitted to STNM Hospital and was discharged on 24.06.2010. It was further alleged that on 30.07.2010 the non-applicant attempted to put her on death by pressing her neck and tying a chunni around her neck. Other facts were also mentioned in the application and it was prayed that the application be allowed and the respondent be directed to pay maintenance of Rs.12,000/- per month. The application was supported by



an affidavit of applicant No. 1 Smt. Ganga Maya Dahal. The certificate of marriage and birth certificate of daughter were also enclosed along with other documents with the application for maintenance.

4. The opposite party/non-applicant, i.e. present petitioner, filed reply/written objection, wherein he denied the allegations as alleged in the application. However, he admitted the contents of paragraph 3 of the application relating to marriage of applicant with non-applicant. He also admitted that applicant No. 2, Priyanka Dahal, was born from their wedlock. Non-applicant submitted that it was the petitioner who herself had left out the residence of the non-applicant by taking all the household belongings earned and purchased by him and she had gone to her cousin's house at Luing Busty, East Sikkim and also took her minor daughter, who was studying in the nursery class, without informing the non-applicant, with a *mala fide* intention to harass the non-applicant. He, therefore, submitted that the application filed by the applicant be dismissed.

5. In support of the case, the applicant examined herself as witness No. 1 and non-applicant examined himself



as opposite party-witness No. 1. The documentary evidence was also produced, which was exhibited.

6. Learned Family Court after considering submissions of learned counsel for the parties, allowed the application and directed the husband-non-applicant to pay a monthly maintenance of Rs.6000/- (Rupees six thousand) per month to the applicants. Being aggrieved with the same, the petitioner has preferred this Revision Petition.

7. Learned counsel appearing on behalf of husband/petitioner submitted that the petitioner is a farmer and has no source of income. Therefore, he is unable to pay Rs.6,000/- towards maintenance to the respondents. He also submitted that respondent No. 1, herself, left out the house of the petitioner, therefore, he is not liable to pay the amount of maintenance to wife, in view of sub-section (4) of Section 125 of the Cr. P.C. He, therefore, submitted that the learned Family Court committed an illegality in passing the impugned order, which may be set aside and application filed by the wife/applicant No. 1 be dismissed.



8. I have considered the submissions of learned counsel for the petitioner in the light of reasons assigned by the Family Court for allowing the application. I have also examined the contents of application, reply/written objection, the statements of petitioner as well as respondent recorded by the Family Court.

9. Smt. Ganga Maya Dahal, in her statement, proved the contents of application filed for maintenance i.e. Exhibit-1, her affidavit in support of application, i.e. Exhibit-2 and Exhibit – 3, land record in the name of husband Bhawani Shankar Dahal. From the cross-examination of Smt. Ganga Maya Dahal, it is clear that not a single question was put to her in her cross-examination that she had left her matrimonial house voluntarily. The document, Exhibit – 3 showing the landed property in the name of husband has also not been challenged.

10. Mr. Bhawani Shankar Dahal/husband, in his deposition, stated that he is a farmer and is not in a position to maintain the wife and daughter. He further stated that he can at the most pay for educational expenses of their daughter. In his cross-examination, he specifically admitted



that the applicant, i.e. wife has no source of income. He also admitted that it is true that he has landed properties, as mentioned in Exhibit – 3.

11. Learned Family Court has considered the deposition of both the witnesses and also the documents placed on record by the parties and came to a conclusion that the applicant-wife is entitled to get maintenance. I do not find any infirmity, illegality or perversity in the impugned order passed by Family Court. The reasons assigned by Family Court for allowing the application are absolutely just and reasonable and no interference in the same is called for.

12. So far as submissions urged on behalf of petitioner-husband is concerned, I do not find any force in the same. The petitioner, Mr. Bhawani Shankar Dahal, in his deposition has not stated a single word that his wife left out her matrimonial house at her own. No question in this regard was put to respondent Smt. Ganga Maya Dahal in her cross-examination also. So far as another submission regarding non-earning by Bhawani Shankar is concerned, it is relevant to mention that he has landed property and this fact has been admitted by him also. The factum of marriage



and daughter from their wedlock is not in dispute in this case. Even if husband is not earning anything, it is his duty to maintain his wife, who is unable to maintain herself and children also. The amount of Rs.6,000/- (Rupees six thousand) cannot be said to be excessive, in the facts and circumstances of the present case, as this amount has been granted for wife and daughter, both.

13. In view of the above discussions, I do not find any merit in the Revision Petition and the same is, accordingly, dismissed.

(N.K. Jain)
Chief Justice
09.05.2014