

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No. 148 of 2023

....

Amit Anand @ Amit Anand Barnwal, aged about 22 years, son of Sanjay Kumar Barnwal, resident of Village-Madhopur, PO-Basudeopur, PS-Kotwali, District- Munger (Bihar)

..... Petitioner

Versus

1. The State of Jharkhand

2. Shiwani Kumari Barnwal, wife of Amit Anand @ Amit Anand Barnwal, resident of Village-Madhopur, PO- Basudeopur, PS-Kotwali, District- Munger (Bihar)

At present residing at Village- Chirudih, PO & PS- Nawadih, District- Bokaro

..... Opp. Parties

PRESENT

HON'BLE MR. JUSTICE SANJAY PRASAD

For the Petitioner : Mr. Manoj Kumar Sah, Advocate

For the State : Mr. Rajesh Kumar, A. P. P.

For the O. P. No. 2 : Mr. Kripa Shankar Nanda, Advocate

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JUDGMENT

C.A.V. on 26.03.2025

Pronounced on 08/04/2025

This Criminal Revision No. 148 of 2023 has been filed on behalf of the petitioner challenging the judgment dated 22.12.2022 passed by Sri Rajiv Ranjan learned Additional Principal Judge, Additional Family Court, Bermo at Tenughat, Bokaro in Original (Maintenance) Suit No. 78 of 2019 whereby the petition under Section 125 of the Cr. P.C. filed by the wife-opposite party no. 2 has been allowed and direction was given to the petitioner to pay Rs. 10,000/- per month to the opposite party

no. 2 towards her maintenance which is payable by 10th day of each succeeding month from the date of filing of the case either by way of Cash or Cheque/DD/ Online transaction.

2. The wife-opposite party no. 2 had filed O. M. Case No. 78 of 2019 against her husband-petitioner under Section 125 of the Cr. P. C. for grant of maintenance in which the husband-petitioner has appeared and had filed his show cause and after hearing both the sides, the learned Court below has passed the impugned order dated 22.12.2022 (it was to be mentioned as Judgment instead of Order).

3. The case of the opposite party no. 2-wife, in brief, is that the marriage between the petitioner and the opposite party no. 2 was solemnized on 23.11.2017 as per the Hindu rites and customs at Burnwal Sewa Sadan, Madhopur, Munger in presence of relatives and friends of both the parties because the father of the petitioner had not agreed to come to Village-Chirudih, PO & PS- Nawadih, District- Bokaro. After that the wife-opposite party no. 2 went to her matrimonial home and started living with her husband and in-laws members and she lived peacefully for one month and thereafter her husband i.e. the petitioner and her in-laws members including Nanad and Nandoyee started torturing her by illegally demanding dowry and subjected to physical and mental torture for Rs. 3,00,000/- and a Bullet Motorcycle and Laptop. It is stated that the parents of the wife-opposite party no. 2 had given Rs. 4,00,000/- cash, four gold ring valued of Rs. 30,000/- and presented ear ring of gold valued Rs. 2,10,000/-, Nathia worth Rs. 15,000/-, Mangtika of Rs. 15,000/- to her daughter. However, her husband and his family members started

torturing the opposite party no. 2-wife and even her father in-law had snatched her mobile and ornaments and her father in-law started teasing her by different methods and also tried to outrage her modesty and demand of dowry. However, when the opposite party no. 2 narrated the story of teasing to her mother in-law and husband, then all the family members threatened to kill her. In the meantime, the wife-opposite party no. 2 became pregnant and when her husband and other in-laws members learnt about her pregnancy, then they forcibly got administered her medicine for miscarriage of child and due to which, she became seriously ill and thereafter, her husband and her father in-law left her in her Maikhe on 04.04.2018 and since then, she is in her Maikhe and is living in Village- Chirudih, PS.-Nawadih. She also stated that during her stay in her matrimonial home, her in-laws refused to provide food, cloth and other requirements such as medicines, shelter and necessary expenses etc. It is stated that she is a house wife and has no source of income and not able to maintain herself and her father is not in a position to maintain her.

It is further stated that her husband i.e. the petitioner is working in Kolkata and who is getting salary of Rs. 30,000/- per month and apart from this, her husband has got rental home and from which he earns Rs. 5,000/- per month. Even her husband is running a shoe shop in Mohalla Madhopur and from the said shop, he earns Rs. 10,000/- per month. Apart from this her husband and his friends have a partnership business of Computer Institute and from which, he earns Rs. 10,000/- per month. Thus, the income of her husband is not less than Rs. 55,000/- per month and the wife-opposite party no. 2 has demanded

maintenance amount since 04.04.2018 and on several occasion, but her husband and his relative denied to maintain her and hence, she has filed the present case for grant of maintenance of Rs. 10,000/- per month.

4. The husband-petitioner had appeared and had also filed show cause stating therein that the application filed by the opposite party no. 2-wife is not maintainable and is fit to be dismissed. It is admitted that the marriage between the petitioner and the opposite party no. 2 was performed as per the Hindu rites and customs on 23.11.2017 at Burnwal Sewa Sadan, Madhopur, Munger in presence of relatives and villagers of both the sides. However, he refuted the assertion of the wife-O. P. No. 2 that the father of the petitioner had refused to come to Village-Chirudih, rather there was no such place to welcome the Barati and for their convenience, the father of the petitioner had offered to come to Munger and where all the arrangements were made. The petitioner has also denied for torturing the opposite party no. 2 i.e. his wife mentally and physically for non-fulfilment of demand of Rs. 3,00,000/- and one Bullet Motorcycle and Laptop. He also denied to have taken any money or any articles during marriage. The petitioner has also denied for giving any threatening to his wife-opposite party no. 2. He also denied regarding pregnancy of his wife-opposite party no. 2 as he has never established physical relationship with his wife. Thus, the allegation of abortion of child against his family members is false and concocted. He is also not aware as to when the applicant-O. P. No. 2 has given birth to a son or daughter and therefore, his wife was never pregnant. The petitioner has further

denied for doing any business of computer institute at Dhanbad with his friend and stated that a person cannot work at four places by doing business and for running the Institute. It is stated that the petitioner is an unemployed person and earlier the petitioner was working in Kolkata, but after marriage and due to pressure of his wife, he left his job and is living at his house at Madhopur, Munger as an unemployed person.

The petitioner has flatly denied for earning Rs. 5,000/- from rent and for earning shop of shoe and sandal and he claimed that the house of the petitioner is small one. The petitioner has also filed a case under Section 9 of the Hindu Marriage Act bearing Case No. 224 of 2018 before the learned Principal Judge, Family Court, Munger and notice was sent to the opposite party no. 2 by Speed Post and which has been received by his wife i.e. opposite party no. 2 and in which she has not appeared and hence ex-parte hearing was done. It is further stated that his wife-opposite party no. 2 is M.Com Pass and is doing online business of Online Burnwal Community and Social Network and from which, she is earning Rs. 40,000/- to Rs. 50,000/- per month and he can file online papers of her business.

It is further stated that his wife i.e. opposite party no. 2 has got relationship with her villager Prashant Kumar Burnwal, who is Manager in Indian Bank and his wife had informed him that she got married with him only on the pressure of her parents and her relatives and hence Maintenance Case may be rejected.

5. Heard learned counsel for the petitioner and learned counsel for the State and learned counsel for the opposite party

no. 2.

6. It is submitted by the learned Counsel for the petitioner that the impugned 'Order' passed by the learned Court below is illegal, arbitrary and not sustainable in the eye of law. It is submitted that the learned Court below has failed to consider that the petitioner is an unemployed as he had earlier resigned from the service in the year 2018, which is evident from letter dated 01.04.2018 issued by Brajesh Kumar Verma, Managing Director, BRAND ME HIGH, South 24 Parganash, Kolkata and which is enclosed as Annexure-4 of this Criminal Revision Application. It is submitted that the petitioner himself is dependent upon his father and has no source of income and is not in a position to give any maintenance amount. It is submitted that the father of the petitioner is not in a position to maintain his wife. It is further submitted that father of the petitioner had never teased or outrage the modesty of his wife and allegation against his father leveled by his wife is false and concocted. It is submitted that the Reliving Letter dated 01.04.2018 issued by Braesh Kumar Verma, Managing Director, BRAND ME HIGH, South 24 Parganash, Kolkata and which is enclosed as Annexure-4 of this Criminal Revision Application, which shows that the petitioner has already been relived from service on 01.04.2018 by his Company i.e. BRAND ME HIGH, South 24 Parganash, Kolkata. It is submitted that the petitioner was not allowed to cross-examine the some witnesses of the opposite party no. 2 and he was not allowed to lead his evidence and hence, the impugned order passed by the learned Court below may be set aside and this Criminal Revision Application may be allowed.

7. On the other hand, learned counsel for the State has submitted that the impugned 'order, passed by the learned Court below is fit and proper and no interference is required by this Court. It is submitted that respondent-O. P. No. 2 has fully supported the case in her maintenance case and as such, no illegality has been committed by the learned Court below by granting maintenance to the opposite party no. 2 and hence, the criminal revision application may be dismissed.

8. On the other hand, learned counsel for the opposite party no. 2, after adopting the submission of the learned A.P.P., has further submitted that the impugned order passed by the learned Court below is fit and proper and no interference is required from this Court. It is submitted that opposite party no. 2 is the legally married wife of this petitioner, but the petitioner has refused to maintain her. It is submitted that the petitioner and in-laws members have tortured and ousted the opposite party no. 2 from her matrimonial home. It is submitted that only in order to avoid payment of maintenance the petitioner has filed a case under Section 9 of the Hindu Marriage Act bearing Case No. 224 of 2018 before the learned Principal Judge, Family Court, Munger. It is submitted that the petitioner had appeared before the learned Court below and has contested the case, but never stated that he was relieved from the company on 01.04.2018 and this defence has taken for the first time before the High Court. It is submitted that the petitioner is a Web Designer and he is an Engineer and has completed Degree of B.Tech and he has sufficient means to maintain himself and as such, no illegality has been committed by the learned Court below by granting

maintenance to the opposite party no. 2 and hence, the criminal revision application may be dismissed.

9. Perused the scanned copies of the records received from the Court of the learned Additional Principal Judge, Additional Family Court, Bermo at Tenughat and considered the submissions of both the sides.

10. During course of the argument before this court, it transpires that the petitioner had filed Cr. M. P. No. 1458 of 2022 and Cr. M. P. No. 1316 of 2022 before this Court though it has not been mentioned at the time of filing of this Criminal Revision Application.

11. It further reveals from the impugned order 22.12.2022 passed by the learned Additional Principal Judge Additional Family Court, Bermo at Tenughat, Bokaro that learned counsel for the petitioner had refused to cross-examine the P.W.-3 namely Bhola Prasad Barnwal, i.e. father of the opposite party no. 2 and P.W.-4 is Shiwani Kumari i.e. the wife- O.P. No. 2 herself on the ground that he had preferred Criminal Revision Application before this High Court and he was not ready to pay the witness cost as directed by the learned Court below and he had denied to cross-examine both i.e. P.W.-3 i.e. Bhola Prasad Barnwal, father of the opposite party no. 2 and P.W.-4 i.e. Shiwani Kumari who is the wife- O.P. No. 2 herself on the ground that Criminal Revision had been filed before the High Court of Jharkhand, Ranchi.

However, the filing of above Cr. M. P. No. 1458 of 2022 has not been stated before this High Court while filing this instant Criminal Revision No. 148 of 2023 before this Court.

12. It reveals from para-2 of the above Criminal Revision Application i.e. Criminal Revision No. 148 of 2023 that the petitioner has suppressed the fact of filing Criminal Revision Application as he merely stated that he has not preferred any Criminal Revision Application against the order dated 22.12.2022 passed by Sri Rajiv Ranjan, learned Additional Principal Judge Additional Family Court, Bermo at Tenughat, Bokaro passed in Original Maintenance Case No. 78 of 2019 before the High Court. Thus, the petitioner has not come with clean hands before this Court.

13. Thus, the petitioner has also violated and suppressed the fact of filing Cr. M. P. No. 1458 of 2022 and Cr. M. P. No. 1316 of 2022 before this Court or any matter is pending or disposed of before this Court in para-2 of this Criminal Revision Application.

14. However, this Court in light of the submission of the parties obtained the Web Copy of the Cr. M. P. No. 1316 of 2022, which reveals that it was dismissed vide order dated 02.08.2022 passed by the Co-ordinate Bench (Hon'ble Mr. Justice Sanjay Kumar Dwivedi) of this Court and Cr. M. P. No. 1458 of 2022, which is pending before this Court.

15. The operative portion of the order dated 02.08.2022 passed in Cr. M. P. No. 1316 of 2022 is as follows:-

“Heard Mr. Manoj Kumar Sah, learned counsel for the petitioner and Mr. Veervijay Pradhan, learned counsel for the State.

This petition has been filed for quashing of order dated 03.03.2022 passed in OMC-78/2019 passed by the learned Additional Principal Judge, Family Court, Bermo at Tenughat,

pending in the Court of learned Additional Principal Judge, Family Court, Bermo at Tenughat.

Learned counsel for the petitioner submits that divorce petition has been filed by the petitioner and the petition under section 125 Cr.P.C. filed by the O.P. No. 2 is not maintainable inspite of that learned court has rejected the petition filed by the petitioner.

Learned court has rightly rejected the petition filed by the petitioner. Only case has been registered under section 125 Cr.P.C. and the petitioner has been called upon to file written statement and pendency of the divorce petition is not a ground for dismissing the petition filed under section 125 Cr.P.C. There is no illegality in the impugned order. Accordingly, this petition is dismissed.”

16. Cr. M. P. No. 1458 of 2022 is still pending before this Court. However, the operative portion of the order dated 03.07.2024 passed in Cr. M. P. No. 1458 of 2022 is as follows:-

“Heard the parties. Perusal of the record reveals that vide order dated 12.04.2024, time was granted as the last chance and today also learned counsel for the petitioner again prays for time. Prayer for time is allowed subject to deposit of Rs.1,000/- by the petitioner with the Jharkhand State Legal Services Authority (JHALSA) within two weeks from the date of this order, failing which, this Cr.M.P. shall stand dismissed without further reference to the Bench. List this Cr.M.P. after six weeks in case the petitioner files the proof of deposit of Rs.1,000/- by the petitioner with the Jharkhand State Legal Services Authority (JHALSA) within two weeks from the date of this order”.

17. It appears that learned Additional Principal Judge Additional Family Court, Bermo at Tenughat, Bokaro has framed following points for determination, which are as follows:-

- “ (i) Whether this petition is maintainable or not ?
- (ii) Whether the petitioner is entitled to get Maintenance from the O. P. as sought, if so, what should be the quantum of Maintenance ?
- (iii) What should be the date of payment of Maintenance and also what should be the mode of payment ?

18. The learned Court below has decided point no. 1 in favour of the opposite party no. 2 herein after considering the evidence led on behalf of the opposite party no. 2-wife by observing that the wife- opposite party no. 2 is living separately from the petitioner –her husband and also the petitioner is not looking after the wife-opposite party no. 2 and hence the Maintenance Case is maintainable by deciding the point no. –I in favour of the wife-opposite party no. 2.

The learned Trial Court has also determined point no. II and III by observing that the opposite party no. 2 is the wife of the petitioner and she is living separately from her parents, even the petitioner-husband had not cross-examined both i.e. P.W.-3, Bhola Prasad Barnwal, father of the opposite party no. 2 and P.W.-4, Shiwani Kumari i.e. the wife- O.P. No. 2 and their evidence remains un-rebutted and hence it cannot be said that the wife is living separately without any reason and she is entitled to get maintenance from her husband-the petitioner.

The Trial Court has further observed that though the

husband-petitioner had stated in his show cause that he has resigned from service, but no document regarding acceptance of resignation had been filed by the husband-petitioner. There is no rebuttal of evidence of the wife-opposite party no. 2 that monthly salary of the petitioner was Rs. 30,000/- per month and thus, the learned Court below has held that the wife-opposite party no. 2 is entitled to maintenance under Section 125 of the Cr. P. C.

However, on the quantum of maintenance amount, the learned Court below has given passing reference of the judgment passed in the case of Chaturvuj Vs. Sita bai reported in (2008) 2 SCC 316 and in the case of Rajnesh Versus Neha and Another reported in 2020 SCC Online SC 903 and has held that the wife is entitled to maintenance of Rs. 10,000/- from the petitioner w.e.f. from 15.03.2019 i.e from the date of filing of application under Section 125 of the Cr. P. C.

19. In this background the evidence of the petitioner, who has not examined himself or other witnesses before the learned Court below and document filed by the petitioner before this Court for the first time has to be seen with care and caution and also evidence led down by the wife-O.P No.2 before the learned Court below.

20. It transpires that four witnesses have been examined on behalf of the wife-opposite party no. 2, who are as follows:-

- (i) P.W.-1 is Kokil Chand Mahato,
- (ii) P.W.-2 is Nand Kishore Verma,
- (iii) P.W.-3 is Bhola Prasad Barnwal, father of the opposite party no. 2 and
- (iv) P.W.-4 is Shiwani Kumari i.e. the wife- O.P. No. 2

herself.

21. However, no document has been marked as the Exhibit on behalf of the wife-opposite party no. 2.

22. Neither any witnesses have been examined nor any document was marked as the Exhibit on behalf of the petitioner.

23. Thereafter, the learned Court below has passed the impugned order as mentioned above.

24. P.W.-1 is Kokil Chand Mahato, who has filed his evidence on affidavit before the learned Additional Principal Judge Additional Family Court on 03.12.2021 stating therein that he is acquainted with both the sides and applicant- wife-opposite party no. 2 was married with the petitioner on 23.11.2017 as per the Hindu rites and customs at Burnwal Sewa Sadan, Madhopur, Munger because the father of the petitioner had not agreed to come to Village-Chirudih, PS- Nawadih, District- Bokaro. The wife-opposite party no. 2 lived peacefully for one month in her matrimonial home, but thereafter her husband i.e. the petitioner and her in-laws members including Nanad started torturing her by illegally demanding dowry and subjected her to physical and mental torture for Rs. 3,00,000/- and a Bullet Motorcycle. He also stated that at the time of marriage, the parents of the wife-opposite party no. 2 had given Rs. 4,00,000/- cash, four gold ring and other gold jewellery items to her daughter. However, her husband and in-laws member started abusing her and even her father in-law had snatched her mobile and Jewellery and her father in-law started teasing her with bad intention and tried to outrage her modesty due to non-fulfillment of demand of dowry. However, when the opposite

party no. 2 narrated the story of teasing to her mother in-law and husband, then they threatened to kill her. In the meantime, the wife-opposite party no. 2 became pregnant and when her husband and other in-laws members learnt about her pregnancy, then they forcibly administered her medicine for miscarriage of child and due to which, she became seriously ill and thereafter, on 04.04.2018 her husband and her father in-law left her in her Maike and since then, she is living in her Maike of Village-Chirudih, PS.-Nawadih and they took no interest in her treatment and maintenance. Even during her stay in her matrimonial home, even her husband and her in-laws members had refused to give food, cloth and other necessary items. Thereafter a panchayati was held, but her husband –petitioner did not appear before panchayat. He stated that the applicant-opposite party no. 2 is a house wife and has no source of income and not able to maintain herself and no other family members is in a position to maintain her. He further stated that her husband i.e. the petitioner is working in Kolkata and is getting salary of Rs. 30,000/- per month and apart from this, the husband of O.P No.2 has got rental home and from which he earns Rs. 5,000/- per month. Even her husband is running a shoe shop in Village- Madhopur and from the shop, he earns Rs. 10,000/- per month. Apart from this her husband and his friends have a partnership business of computer institute and from which, he earns Rs. 10,000/- per month. Thus, the income of her husband is not less than Rs. 55,000/- per month and hence, wife-opposite party no. 2 is entitled for maintenance of Rs. 10,000/- per month.

25. However, during cross-examination, he stated that the

marriage between the petitioner and the opposite party no. 2 was performed in the year 2017 and he had gone in their marriage at Madhopur Basti, Munger. He had gone two times at Madhopur, but he had not gone the place where the Amit resides. He further stated that negotiation of marriage was held in Munger and he had also gone there and there was negotiation/talk of giving Rs. 4,00,000/-, four golden ring. He further stated that Bhola Prasad i.e the father of Shivani i.e. wife of the petitioner has a Ration Shop and from which, he is earning Rs. 4,000/- to Rs. 5,000/- per month and making expenses of five persons. Whereas father of the petitioner -Amit Anand has got shoe shop. He also admitted that assault upon Shivani i.e. wife and Demand of Dowry was not made in his presence. He has stated that although the husband of Shivani is an Engineer in Kolkata, but he is not aware of the name of the Company and her husband has orally stated for earning Rs. 30,000/- per month.

26. However, this Court refrains itself from giving any finding on the merit of the evidence of P.W.-1, Kokil Chand Mahato at this stage.

27. P.W.-2 is Nand Kishore Verma, who has also filed his evidence on affidavit dated 03.12.2021 stating the same fact in-verbatim as stated by P.W.-1, Kokil Chand Mahato during his evidence and as such, the same is not being repeated for the sake of repetition here.

However, during his cross-examination on 03.12.2021, he admitted that he is coming to Tenughat Court since last fifteen years and he has given evidence 3-4 times and he has given the evidence in the cases of his village. He further stated that he had

gone to Munger three to four times and Shivani i.e. the opposite party no. 2 is sister in his relation in the village. He claimed to have met Amit i.e. the petitioner twice and the petitioner-Amit is running one institute and he is doing job in Kolkata. He admitted that no panchayati was taken place in the Village. He further stated that father of Shivani i.e. P.W.-3 is running grocery shop. The applicant- Shivani is graduate and has remained in her matrimonial home for one year, but she has got not issue. He further stated that the wife-O. P. No. 2 is fully dependent upon her father. He denied the suggestion that the petitioner wants to keep his wife, but they do not want to send her matrimonial home.

28. However, this Court refrains itself from giving any finding on the merit of the evidence of P.W.-2, Nand Kishore Verma at this stage.

29. P.W.-3, Bhola Prasad Barnwal is the father of the opposite party no. 2 (i.e. wife of the petitioner) and he also filed his evidence on affidavit dated 19.02.2022 in form of Heading of Deposition stating therein that the applicant-wife is his daughter and his daughter was married on 23.01.2012 as per the Hindu rites and customs at Burnwal Sewa Sadan, Madhopur, Munger because the father of the petitioner and the petitioner were not willing to come to Village-Chirudih, PS- Nawadih, District-Bokaro. After marriage, the applicant-opposite party no. 2 went to her matrimonial home and lived peacefully for one month with her in-laws members and thereafter her husband i.e. the petitioner and her in-laws members including Nanad started torturing her

by illegally demanding dowry and subjected to physical and mental torture for Rs. 3,00,000/- and a Bullet Motorcycle. He also stated that at time of marriage, he had given Rs. 4,00,000/- cash, four gold ring and other jewellery, however, her husband and his family members started abusing and torturing the opposite party no. 2 and even her father in-law had snatched her mobile and jewellery and her father in-law teased her and tried to outrage her modesty for non-fulfillment of demand of dowry with ill intention and for which the applicant – wife had informed her mother in-law and husband, but they threatened to kill her. In the meantime, the applicant-opposite party no. 2 became pregnant and when her husband and other in-laws members learnt about her pregnancy, then they forcibly got administered her medicine for abortion and due to which, she became seriously ill and thereafter, on 04.04.2018 her husband and her father in-law brought back to her in her Maike (Chirudih) and they had neither got treated nor taken any steps for her maintenance. He further stated that after marriage, the applicant-O.P no.2 and her husband also remained in Village Chirudih, PS-Nawadih, District- Bokaro and the petitioner i.e. her husband also demanded Rs. 3,00,000/-, Motorcycle and Laptop. Even the petitioner and his family members had failed to provide proper food, cloth and other necessary expenses to the applicant-opposite party no. 2 and had not taken any steps for her maintenance and the petitioner had also not attended the panchayati. He also stated that the applicant –opposite party no. 2 has no source of income and she is unable to maintain herself and he is also not in a position to maintain her whereas the petitioner

is capable to maintain his wife. He further stated that the petitioner i.e. the husband of the opposite party no. 2, is doing job in Kolkata and is earning Rs. 30,000/- per month and apart from this, the petitioner has got house in his village Madhopur and from which he earns Rs. 5,000/- per month and the petitioner is also running a shoe shop in Village Madhopur and from which he earns Rs. 10,000/- per month. Apart from this, the petitioner and his friend have a partnership business of computer institute and from which, he earns Rs. 10,000/- per month. Thus, the petitioner is having income of atleast Rs. 55,000/- per month. He further stated that the applicant-wife is living in his house since 04.04.2018 and the petitioner and his family members had refused to maintain her and hence, the applicant-opposite party no. 2 may be given Rs. 10,000/- per month for her maintenance and for other necessary expenses.

30. However, P.W.-3, Bhola Prasad Barnwal was not cross-examined by the learned counsel appearing on behalf of the petitioner in the Court of learned Additional Principal Judge Additional Family Court, as the learned counsel appearing on behalf of the petitioner-husband had not agreed to pay the witness cost and has stated that the petitioner-husband has filed Revision before the High Court of Jharkhand and thus, this witness i.e. PW-3 was discharged without cross-examination by the learned Additional Principal Judge Additional Family Court, Bermo at Tenughat on 23.04.2022.

31. However, this Court refrains itself from giving any finding on the merit of the evidence of P.W.-3, Bhola Prasad Barnwal at this stage.

32. Surprisingly in the garb of filing revision before this High Court, the learned counsel for the petitioner had refused to cross-examine the P.W.-3, Bhola Prasad Barnwal and thus, P.W.-3, Bhola Prasad Barnwal was discharged on 23.04.2022 without cross-examination due to refusal of cross-examination on behalf of the petitioner and his counsel was not agreed to pay witness cost.

33. P.W.-4 is Shiwani Kumari i.e. the wife- O.P. No. 2 herself and she has filed her evidence also on an affidavit dated 19.02.2022 in form of Heading of Deposition stating therein that she was married with the petitioner- Amit Anand @ Amit Anand Burnbal on 23.11.2017 as per the Hindu rites and customs at Burnwal Sewa Sadan, Madhopur, PS- Kotwali, District- Munger (Bihar) because the father of the petitioner and the petitioner had not agreed to come to Village-Chirudih, PS- Nawadih, District- Bokaro (Jharkhand). After marriage, she went to her matrimonial home and started living with her husband and in-laws members and she lived peacefully for one month in her matrimonial home and thereafter her husband i.e. the petitioner and her in-laws members including Nanad started torturing her by illegally demanding dowry and subjected to physical and mental torture for Rs. 3,00,000/- and a Bullet Motorcycle and Laptop. She further stated that her parents had given Rs. 4,00,000/- cash, four gold ring and other golden jewellery to her husband and her daughter, which is worth of Rs. 2,81,000/-. However, her husband and in-laws members used to assault and abused her every day and even her father in-law had snatched her mobile

and jewellery and her father in-law teased her with ill intention and tried to outrage her modesty due to non-fulfilment of demand of dowry. However, when she narrated the story of teasing to her mother in-law and husband, then they threatened to kill her. In the meantime, she became pregnant and when her husband and other in-laws members learnt about her pregnancy, then they forcibly got administered her medicine to terminate her pregnancy and due to which, she became seriously ill and thereafter, her husband and her father in-law had left her in her Maikhe on 04.04.2018 and they neither got treated her nor considered for her maintenance. She further stated that after marriage, her husband and her in-laws members remained in Village- Chirudih, PS- Nawadih, District-Bokaro and her husband and her in-laws members further demanded Rs. 3,00,000/-, one Motorcycle and one Laptop. Finally, she was ousted her from her matrimonial home in the year 2018 and her in-laws members refused to provide food, cloth and other requirements such as medicines, shelter and necessary expenses etc., then she called for panchayati, but they did not appear in Panchayati. She is a household lady and has no source of income and she is unable to maintain herself and her family members is also not in a position to maintain her.

34. However, her husband i.e. the petitioner is working in Kolkata and who is getting salary of Rs. 30,000/- per month and apart from this, her husband has got rental home and from which he earns Rs. 5,000/- per month. Even her husband is running a shoe shop in Village Madhopur and from the shop, he earns Rs. 10,000/- per month. Apart from this her husband and his friend

have a partnership business of Computer Institute and from which, he earns Rs. 10,000/- per month. Thus, the income of her husband is not less than Rs. 55,000/- per month.

She claimed to have enclosed the photocopy of the same before the learned Court below during her evidence, but no such documents have been marked as the Exhibits by the learned Court below. She further stated that she is residing at her parental home since 04.04.2018. She has refuted the allegations of the petitioner and hence she may be given Rs. 10,000/- per month as maintenance.

35. However, P.W.-4, Shiwani Kumari was also not cross-examined by the learned counsel appearing on behalf of the petitioner in the Court of learned Additional Principal Judge Additional Family Court, Bermo at Tenughat as the learned counsel appearing on behalf of the petitioner-husband had not agreed to pay the witness cost and stated that the petitioner-husband has filed Revision Application before the High Court of Jharkhand and thus, this witness i.e. P.W.-4 was discharged without cross-examination by the learned Additional Principal Judge Additional Family Court, Bermo at Tenughat on 23.04.2022.

Thus, evidence of P.W.-4, Shiwani Kumari remains un-rebutted and un-controverted.

36. However, this Court refrains itself from giving any finding on the merit of the evidence of P.W.-4, Shiwani Kumari at this stage.

37. However evidence of P.W.-4 at Para-9 reveals that she had also filed certain documents, but the same were not marked

by the learned Court below.

38. So far as the documentary evidence of the petitioner is concerned, it would appear that the petitioner had filed his show cause before the learned Additional Principal Judge, Additional Family Court, Bermo at Tenughat, Bokaro on 14.12.2020 and copy was attached by the learned counsel for the petitioner by making endorsement “Applicant’s Lawyer not found”. However, filing of show cause is not incorporated in the order sheet as it was the period of COVID-2019 Pandemic and as such, there might be possibility that show cause dated 14.12.2020 filed by the husband-petitioner could not be marked in the order sheet or on 15.01.2021 and on 12.02.2021 and also on subsequent dates till 13.08.2021 and the learned Court below on 13.08.2021 had observed that the case is fixed on 18.09.2021 for filing show cause by the petitioner.

39. It reveals from the order sheet of the learned Court below that vide order dated 06.12.2019, when both the both the parties had appeared and the matter was referred to Mediation Centre, Tenughat by fixing the date on 20.12.2019 and the case remained pending on 20.12.2019 and 10.01.2020, 14.02.2020, 11.12.2020, 15.01.2021, 12.02.2021, 05.03.2021, 06.03.2021, 09.04.2021, 01.05.2021, 11.06.2021, 17.07.2021 and 13.08.2021 respectively for awaiting mediation report and however, order sheet 13.08.2021 reveals that the mediation report was received and it was observed by the learned Court below that mediation remained unsettled and the case was fixed on 18.09.2021 for filing show cause on behalf of the petitioner and also on 08.10.2021 for filing show cause by the petitioner.

40. On 03.12.2021 without mentioning the fact of filing show cause or earlier filing show cause by the petitioner, two witnesses namely P.W.-1, Kokil Chand Mahato and P.W.-2, Nand Kishore Verma were produced and their evidence were taken and who were examined and cross-examined and discharged.

41. However, on 03.12.2021, the learned Court below noticed that show cause has already been filed by the husband-petitioner and available on record and thereafter P.W.-1, Kokil Chand Mahato and P.W.-2, Nand Kishore Verma were examined and fully cross-examined and discharged and the case was fixed on 07.01.2022 for further evidence of the applicant-wife-opposite party no. 2.

42. Thereafter it was posted on 12.01.2022. However, in the meantime, an application was filed on behalf of the petitioner to expunge the evidence of the witnesses on the ground of false legal affidavit. Thereafter vide order dated 09.02.2022, the learned Court below directed the applicant-wife-opposite party no. 2 to file her show cause. Even on 19.02.2022, evidence of P.W.-3, Bhola Prasad Barnwal and P.W.-4, Shiwani Kumari were filed on an affidavit. However, the evidence was deferred.

43. It reveals that thereafter vide order dated 03.03.2022, the learned Court below had rejected the petition filed on behalf of the petitioner for expunging the evidence of P.W.-1, Kokil Chand Mahato and P.W.-2 i.e. Nand Kishore Verma on the ground that the opposite party i.e. the petitioner-husband has fully cross-examined the said witnesses.

44. It further reveals that vide the same order dated

03.03.2022, the learned Court below has rejected another petition dated 03.12.2021 filed by the husband-petitioner to the effect that he has filed one Divorce Case bearing Matrimonial Case No. 93 of 2020 in light of judgment rendered by the Hon'ble Supreme Court in AIR 2020 SC 952 and also the learned Court below has observed that judgment of the said case is not applicable in the present case as both the proceedings are different and even divorcee wife is entitled for maintenance.

Thereafter the matter was posted on 15.03.2022 and further it was posted on 05.04.2022.

45. It further reveals from the order sheet dated 05.04.2022 that the learned Additional Principal Judge, Additional Family Court, Bermo at Tenughat, Bokaro that the husband of the petitioner had filed an affidavit with regard to his income and on that day, the wife-opposite party no. 2 had produced again two evidences i.e. P.W.-3, Bhola Prasad Barnwal and P.W.-4 is Shiwani Kumari.

However, on 05.04.2022 in light of the application filed by the husband- petitioner to move before this Court by filing Criminal Revision and has prayed for time and filed fresh vakalatnama on behalf of the petitioner. Hence, the Court had deferred the evidence of P.W.-3, Bhola Prasad Barnwal and P.W.-4, Shiwani Kumari till 23.04.2022 by imposing cost of Rs. 500/- per witness as witness cost.

46. It further reveals that on 23.04.2022, both i.e. P.W.-3, Bhola Prasad Barnwal and P.W.-4 is Shiwani Kumari were produced for the evidence, but again time petition was filed by the learned counsel for the petitioner-husband that they had

preferred Cr. M. P. No. 1316 of 2022 before the High Court of Jharkhand and has prayed for time. However, learned Court below has rejected time petition on the ground that the learned counsel for the petitioner-husband had not agreed to pay witness cost i.e. Rs. 1,000/- to the witnesses for further cross-examination and there is no stay order passed by the High Court and as such, the learned Court below had discharged the P.W.-3, Bhola Prasad Barnwal and P.W.-4 namely Shiwani Kumari without cross-examination and the fixed the case for evidence of the applicant wife-opposite party no. 2 on 18.05.2022 and also on 25.05.2022.

47. However, on 25.05.2022, the applicant-wife-opposite party no. 2 was closed on her request and the case was posted on 14.06.2022 for evidence of the husband-petitioner. However, on 14.06.2022, 05.07.2022, 25.07.2022, 12.08.2022 respectively, no witnesses was produced by the husband-petitioner before the learned Court below and the learned Court below has also observed on 12.08.2022 that Cr. M. P. No. 1316 of 2022 has been dismissed by the Jharkhand High Court.

48. Thereafter the matter was posted on 23.08.2022 and they had prayed for long time of one month on the ground of possibility of compromise and on their request, the case was posted on 27.09.2022 for evidence of the husband-petitioner and on the ground of compromise. Even on 27.09.2022, one another Petition was filed by the petitioner to cross-examine P.W.-3, Bhola Prasad Barnwal and P.W.-4, Shiwani Kumari, but the said petition was not pressed and it was posted on 16.11.2022. However, on 16.11.2022, the case was adjourned on 30.11.2022 for the evidence of the husband-petitioner.

49. However, vide order dated 16.11.2022, the learned Court below did not entertain the Petition for interim maintenance filed by the opposite party no. 2-wife.

50. It further reveals on 30.11.2022, the petitioner had appeared in the learned Court below by filing another Vakalatnama through another counsel and again filed a Petition for examination of P.W.-3, Bhola Prasad Barnwal and P.W.-4 Shiwani Kumari. However, the learned Court below had rejected the said petition for examination of P.W.-3, Bhola Prasad Barnwal and P.W.-4 is Shiwani Kumari.

51. The learned Court below vide order dated 30.11.2022 had also rejected the said Petition on the ground that till date the petitioner had neither produced any evidence nor they had filed Time Petition. The learned Court below has also observed that even they had preferred Cr. M. P. No. 1316 of 2022, which was dismissed vide order dated 02.08.2022 by the Jharkhand High Court.

52. It further reveals from the order sheet dated 13.12.2022, that a Petition was filed under Section 311 of Cr.P.C. alongwith statement of evidence of the witness. However, vide order dated 13.12.2022 the learned Court below has rejected the said Petition filed by the petitioner and heard arguments of both the sides and posted the case for 'Order' on 22.12.2022 and thereafter, this impugned Order has been passed.

53. It reveals from the entire scanned copies of the record from Additional Principal Judge, Additional Family Court that the Petition filed under Section 311 Cr. P. C. and evidence filed by the petitioner are not on record and it had not been sent before

this Court by the office of the learned Additional Principal Judge Additional Family Court.

54. It appears that office of the learned Additional Principal Judge, Additional Family Court, Bermo at Tenughat, Bokaro is highly negligent for not sending the said Petition dated 30.11.2022 filed under Section 311 of the Cr. P. C. by the petitioner and the copy of the deposition of witness filed on behalf of the petitioner-Amit Anand @ Amit Anand Barnwal on 13.12.2022. Apart from this office of the learned Court below has not placed the documents filed by the applicant-wife-opposite party no. 2 during her evidence on 19.02.2022 while examined as P.W.-4.

55. It appears that the photocopies of documents as stated by P.W.-4, Shiwani Kumari at Para-9 of her deposition, have neither been marked before the learned Court below nor sent before this Court. This shows clear negligence on the part of the Office as well as the Presiding Officer i.e. learned Additional Principal Judge, Additional Family Court, Bermo at Tenughat, Bokaro, which is not appreciated by this Court.

Thus, the PO learned Additional Principal Judge, Additional Family Court, Bermo at Tenughat, Bokaro/or his successor Court and his office should remain cautious in future while sending the scanned copies of entire documents before this Court instead of some documents as indicated above.

56. Even Petition filed by the petitioner for recalling the evidence of P.W.-3, Bhola Prasad Barnwal and P.W.-4 is Shiwani Kumari has not been sent before this Court.

Therefore, it is evident that the petitioner has not been

provided sufficient opportunity by the learned Court below to examine P.W.-3, Bhola Prasad Barnwal and P.W.-4 Shiwani Kumari on recall.

57. However, at the same time, the petitioner has also lingered the matter for long time from 14.06.2022 till 16.11.2022.

58. It is well settled from the judgment rendered by the Hon'ble Supreme Court in the case of *Rajneesh Vs. Neha Arora* reported in 2021 (2) SCC 324 that even if wife is working and is earning some amount, the husband is bound to pay the amount of maintenance.

59. It has been held in the case of *Sunita Kachwaha and Others vs Anil Kachwaha* reported in *2014 (16) SCC 715* at para 7, 8 and 10 as follows:-

“Para-7:- Inability to maintain herself is the pre-condition for grant of maintenance to the wife. The wife must positively aver and prove that she is unable to maintain herself, in addition to the fact that her husband has sufficient means to maintain her and that he has neglected to maintain her. In her evidence, the appellant-wife has stated that only due to help of her retired parents and brothers, she is able to maintain herself and her daughters. Where the wife states that she has great hardships in maintaining herself and the daughters, while her husband's economic condition is quite good, the wife would be entitled to maintenance.

Para-8:- The learned counsel for the respondent submitted that the appellant-wife is well qualified, having post graduate degree in Geography and working as a teacher in Jabalpur and also working in Health Department. Therefore, she has income of her own and needs no financial support from respondent. In our considered view, merely because the appellant-wife is a qualified post graduate, it would not be sufficient to hold that she is in a position

to maintain herself. Insofar as her employment as a teacher in Jabalpur, nothing was placed on record before the Family Court or in the High Court to prove her employment and her earnings. In any event, merely because the wife was earning something, it would not be a ground to reject her claim for maintenance.

Para-10:-The impugned order of the High Court dated 26.06.2008 passed in Criminal Revision No. 2303/2007 is set aside and this appeal is allowed. The respondent is directed to pay the maintenance of Rs.3,000/- per month to the appellant-wife as ordered by the Family Court and also pay the arrears of maintenance payable to the appellant-wife within the period of eight weeks.”

60. It has been held in ***Kalyan Dey Chowdhury Vs Rita Dey Chowdhury Nee Nandy*** reported in ***2017 (14) SCC 200*** at paragraph 15, as follows:-

“Para 15:- The review petition under Order 47 Rule 1 CPC came to be filed by the respondent wife pursuant to the liberty granted by this Court when the earlier order dated 2-2-2015 awarding a maintenance of Rs 16,000 to the respondent wife as well as to her minor son was under challenge before this Court. As pointed out by the High Court, in February 2015, the appellant husband was getting a net salary of Rs 63,842 after deduction of Rs 24,000 on account of GPF and Rs 12,000 towards income tax. In February 2016, the net salary of the appellant is stated to be Rs 95,527. Following Kulbhushan Kumar v. Raj Kumari, in this case, it was held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependent on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors. Since in February 2016, the net salary of the husband was Rs 95,000 per month, the High Court was justified in enhancing the maintenance amount. However, since the appellant has also got married second time and has a child from the second marriage, in the interest of justice, we think it proper to reduce the amount of maintenance of Rs 23,000 to Rs 20,000 per month as maintenance to the respondent wife and son.”

61. It has been held in the case of ***Dr. Swapan Kumar Banerjee Vs. State of West Bengal and Another*** reported in **2020 (19) SCC 342**, that even a wife who has been divorced on ground of desertion is entitled to claimed maintenance and it has been held at para 5 and 7 which are as follows:-

“Para 5:- Thereafter, in Rohtash Singh v. Ramendri this Court took a similar view: (SCCP 184, para 11)

11. The learned counsel for the petitioner then submitted that once a decree for divorce was passed against the respondent and marital relations between the petitioner and the respondent came to an end, the mutual rights. Duties and obligations should also come to an end. He pleaded that in this situation, the obligation of the petitioner to maintain a woman with whom all relations came to an end should also be treated to have come to an end. This plea, as we have already indicated above, cannot be accepted as a woman has two distinct rights for maintenance. As a wife, she is entitled to maintenance unless she suffers from any of the disabilities indicated in Section 125(4). In another capacity, namely, as a divorced woman, she is again entitled to claim maintenance from the person of whom she was once the wife. A woman after divorce becomes a destitute. If she cannot maintain herself or remains unmarried, the man who was once her husband continues to be under a statutory duty and obligation to provide maintenance to her.”

“Para 7:- No doubt, as urged by Mr Debal Banerjee. Explanation II to Section 125 9 CrPC by deeming fiction includes a divorced woman to be a wife and, therefore, a woman who has been divorced by her husband can still claim maintenance under Section 125 CrPC. The question is how we should read the provisions of sub-section (4) in this regard, especially when we deal with those women, against whom a decree for divorce has been obtained on the ground that they have deserted their husband. Once the relationship of marriage comes to an end, the woman obviously is not under any obligation to live with her former husband. The deeming fiction of the divorced wife being treated as a wife can only be read for the limited purpose for grant of maintenance and the deeming fiction cannot be stretched to the illogical extent that the divorced wife is under a compulsion to live with the ex-husband. The husband cannot urge that he can divorce his wife on the ground that she has

deserted him and then deny maintenance which should otherwise be payable to her on the ground that event after divorce she is not willing to live with him. Therefore, we find no merit in the contention of Mr Debal Banerjee.”

62. It has been held in the case of *Rajneesh Vs. Neha and Another* reported in *2021 (2) SCC 324* at Para-77, 78, 80 and 113, which are as follows:-

“Para-77:- The objective of granting interim/permanent alimony is to ensure that the dependent spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is no straitjacket formula for fixing the quantum of maintenance to be awarded.

Para-78:- The factors which would weigh with the court inter alia are the status of the parties; reasonable needs of the wife and dependent children; whether the applicant is educated and professionally qualified; whether the applicant has any independent source of income; whether the income is sufficient to enable her to maintain the same standard of living as she was accustomed to in her matrimonial home; whether the applicant was employed prior to her marriage; whether she was working during the subsistence of the marriage; whether the wife was required to sacrifice her employment opportunities for nurturing the family, child rearing, and looking after adult members of the family; reasonable costs of litigation for a non-working wife. [Refer to *Jasbir Kaur Sehgal v. District Judge, Dehradun*, (1997) 7 SCC 7; Refer to *Vinny Parmvir Parmar v. Parmvir Parmar*, (2011) 13 SCC 112 : (2012) 3 SCC (Civ) 290]

Para-80:- On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own

maintenance, and dependent family members whom he is obliged to maintain under the law, liabilities if any, would be required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able-bodied and has educational qualifications. [*Reema Salkan v. Sumer Singh Salkan*, (2019) 12 SCC 303 : (2018) 5 SCC (Civ) 596 : (2019) 4 SCC (Cri) 339]

Para-113:- It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that maintenance be awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant.”

63. It has been held in the case of *Reema Salkan Versus Sumer Singh Salkan* reported in **2019 (12) SCC 303** at Para-13 and 15, which are as follows:-

“**Para-13:-** Be that as it may, the High Court took into account all the relevant aspects and justly rejected the plea of the respondent about inability to pay maintenance amount to the appellant on the finding that he was well educated and an able-bodied person. Therefore, it was not open to the respondent to extricate from his liability to maintain his wife. It would be apposite to advert to the relevant portion of the impugned judgment which reads thus :

(*Reema Salkan case* [*Reema Salkan v. Sumer Singh Salkan*, 2018 SCC OnLine Del 9380 : (2018) 250 DLT 16] , SCC OnLine Del paras 80-84)

“80. The respondent during the cross-examination has admitted that he too is BCom, MA (Eco) and MBA from Kentucky University, USA; the respondent is a Canadian citizen working with Sprint Canada and is earning Canadian \$(CAD) 29,306.59 as net annual salary. However, he has claimed that he has resigned from Sprint Canada on 23-11-2010 and the same has been accepted on 27-11-2010 and the respondent since then is unemployed and has got no source of income to maintain himself and his family.

81. In the instant case, the petitioner has filed the case under Section 125 CrPC, 1973 for grant of maintenance as she does not know any skill and specialised work to earn her livelihood i.e. in Para 26 of maintenance petition against her husband. However, the respondent husband who is well educated and comes from extremely respectable family simply denies the same. The respondent husband in his written statement does not plead that he is not an able-bodied person nor he is able to prove sufficient earning or income of the petitioner.

82. It is an admitted fact emerging on record that both the parties got married as per Hindu rites and customs on 24-3-2002 and since then the petitioner was living with her parents from 10-8-2002 onwards, and the parents are under no legal obligation to maintain a married daughter whose husband is living in Canada and having Canadian citizenship. The plea of the respondent that he does not have any source of income and he could not maintain the wife is no answer as he is mature and an able-bodied person having good health and physique and he can earn enough on the basis of him being able-bodied to meet the expenses of his wife. In

this context, the observation made in *Chander Parkash v. Shila Rani* [*Chander Parkash v. Shila Rani*, 1968 SCC OnLine Del 52 : AIR 1968 Del 174] by this Court is relevant and reproduced as under : (SCC OnLine Del para 7)

‘7. ... 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 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.’

83. The husband being an able-bodied person is duty-bound to maintain his wife who is unable to maintain herself under the personal law arising out of the marital status and is not under contractual obligation. The following observation of the Apex Court in *Bhuwan Mohan Singh v. Meena* [*Bhuwan Mohan Singh v. Meena*, (2015) 6 SCC 353 : (2015) 3 SCC (Civ) 321 : (2015) 4 SCC (Cri) 200 : AIR 2014 SC 2875] , is relevant : (SCC p. 357, para 2)

‘2. Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short “the Code”) was conceived to ameliorate the agony, anguish, financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status

and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life “dust unto dust”. It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.’

84. The respondent's mere plea that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife in presence of good physique along with educational qualification.”

(emphasis in original)

Para-15:- The only question is : whether the quantum of maintenance amount determined by the High Court is just and proper. The discussion in respect of this question can be traced only to para 85 of the impugned judgment which reads thus : (*Reema Salkan case [Reema Salkan v. Sumer Singh Salkan, 2018 SCC OnLine Del 9380 : (2018) 250 DLT 16] , SCC OnLine Del*) “85. So far the quantum of maintenance is concerned, nothing consistent is emerging on record to show the specific amount which is being earned by the respondent after 2010, however, the husband is legally bound to maintain his wife as per the status of a

respectable family to which he belongs. The husband being able-bodied along with high qualification BCom, MA (Eco) and MBA from Kentucky University, USA could earn at least minimum of Rs 18,332 as per the current minimum wage in Delhi. Therefore, the petitioner being wife is entitled to Rs 9000 per month from 9-12-2010 onwards till further orders.”

64. It has been held in the case of *Kaushalya Versus Mukesh Jain* reported in **2020 (17) SCC 822** at Para-9 to 14, which are as follows:-

“Para-9:- Having regard to all these facts and circumstances and bearing in mind the fact that the application for maintenance remained pending for nearly a decade, we are of the view that there would be a serious miscarriage of justice if an order of remand simpliciter is passed without providing any financial security to the appellant. Even the application for setting aside the ex parte decree for divorce has remained pending unfortunately for a decade. This state of affairs has to be rectified at the earliest since it is symptomatic of the breakdown of the administration of justice in family matters.

Para-10:- Ms Vrinda Grover, learned counsel submitted that in the course of remanded proceedings, the respondent would wish to lead evidence in regard to the financial position of the appellant. Undoubtedly, the parties are at liberty to advance their specific cases by producing such additional evidence they seek to produce in pursuance of the order of the High Court.

Para-11:- We are inclined to affirm the order of remand for the reason that the difficulty which the learned Judge of the Family Court faced in making a fair assessment of the income of the respondent was noticed by the High Court. During the course of hearing, we have been taken through the relevant documents and on an overall consideration of the matter, we are of the view that it will be appropriate to affirm the order

of remand. At the same time, doing so without a protective ad interim direction for the grant of maintenance would result in a failure of justice.

Para-12: Hence, we pass the following order:

Para-12.1:- The order of remand passed by the High Court on 20-11-2018 [*Mukesh Jain v. Kaushalya*, 2018 SCC OnLine Mad 13566] shall stand confirmed.

Para-12.2:- The First Additional Family Court, Chennai is directed to dispose of the proceedings of remand within a period of six months from the date of receipt of a certified copy of this order after allowing the parties an opportunity to adduce such further evidence as they may desire within a period of two months from the date of receipt of a certified copy of this order.

Para-12.3:- In the meantime, the order passed by the trial court for the grant of maintenance shall operate as an ad interim direction and the arrears which are payable to the appellant shall be paid over in six equal monthly instalments, the first of which shall be payable on or before 14-8-2019. The rest of the instalments shall be payable on or before ninth day of every succeeding month. Any payment which is made to the appellant in pursuance of above directions shall abide by the final directions of the Family Court in regard to the payment of maintenance.

Para-12.4:- In the event that there is any failure on the part of the respondent to comply with the order for deposit of arrears and month to month instalments, it will be open to the appellant to apply before the Family Court to get the defence of the respondent struck off.

Para-13:- The parties have agreed, in the meantime, to explore the possibility of a mediated settlement and have agreed to the nomination of Mr Sriram Panchu, learned Senior Counsel practising before the Madras High Court for that purpose. We request Mr Sriram Panchu to act as a mediator. Any settlement may be filed by the parties by moving

a miscellaneous application before this Court.

Para-14:- The appeals are disposed of accordingly.”

66. Initially this Court was not inclined to interfere with the impugned order for the present in view of the fact that the amount was not so high, but considering the fact that the husband-petitioner has been prevented from leading or adducing his evidence and his Petition filed on 30.11.2022 for examining the P.W.-3, Bhola Prasad Barnwal and P.W.-4 is Shiwani Kumari on recall was rejected and even his another petition dated 13.12.2022 filed under Section 311 of the Cr.P.C. alongwith evidence of his witness on an affidavit, thus, this Court is inclined to interfere with Order dated 22.12.2022 passed by Sri Rajiv Ranjan learned Additional Principal Judge, Additional Family Court, Bermo at Tenughat, Bokaro in Original (Maintenance) Suit No. 78 of 2019 because in absence of entire Lower Court Records, this Court is not in a position to ascertain as to whether, the petitioner was willing pay the witness cost of Rs. 1,000/- to the parties or not and also in view of the fact that from 14.06.2022 till 16.11.2022 i.e. in a gap of five (5) months, evidence of the husband-petitioner was closed.

67. However, during this period of five (5) months, there was Annual Vacation of one month for the entire Civil Courts in the State of Jharkhand during the said period of 14.06.2022 till 16.11.2022.

68. Although, the conduct of the petitioner is not so fair to allow him to adduce his evidence but taking into consideration the fact that this is a matrimonial dispute and if the husband is willing to contest the case on merit, then he may be allowed to participate in the proceeding under Section 125 Cr.P.C subject to certain rider so that

the entire things may come on record in order to adjudicate the dispute between both the parties finally to arrive of a just conclusion in fairness as he has to pay the maintenance amount if he fails to rebut the evidence of the applicant wife-O.P No.2.

69. Had the petitioner not filed his evidence on an affidavit and had he not filed any Petition to recall the evidence of the P.W.-3, Bhola Prasad Barnwal and P.W.-4, Shiwani Kumari after the dismissal of Cr. M. P. No. 1316 of 2022 by the Co-ordinate Bench (Hon'ble Mr. Justice Sanjay Kumar Dwivedi) of this Court then this Court might not have considered his case and he also filed the evidence of a witness on an affidavit (which is not the part of the Lower Court Records as the same has not been sent by the learned Court below), however, it can be presumed that the husband-petitioner wants to contest the case and it will be proper to allow him to contest the case on merit and to adduce his evidence.

70. However, at the same time he cannot be allowed latitude to drag the case for a long period by filing vexatious petition before the learned Court below or before the High Court and a time limit for doing a certain thing has to be fixed and summarized so that the matter may be finally decided within a reasonable period.

71. Therefore, the petitioner cannot be allowed to take advantage of his own ground also and hence he has to pay monthly maintenance to his wife-opposite party no. 2 by way of interim maintenance till the disposal of O. M. Case No. 78 of 2019 pending before the learned Court below and maintenance amount by way of interim maintenance has to be paid from the date of filing of Maintenance Petition under Section 125 Cr.P.C. i.e. on 15.03.2019 as the wife-opposite party no. 2 cannot be denied of her valuable rights

accrued to her due to hasty attitude of her husband-the petitioner.

72. At the same time, wife cannot be deprived of her legal rights for getting some maintenance amount as because, the learned Court below vide order dated 16.11.2022 has been rejected Petition for grant of interim maintenance on the ground that the maintenance case is on the verge of disposal.

73. Even the petitioner has adopted the delaying practice as he had filed Criminal Revision Application in the year 2023 before this High Court on 03.02.2023 and notice was issued upon the opposite party no. 2 on 21.06.2023 by the Co-ordinate Bench (Justice Ratnaker Bhengra as then His Lordship was) of this Court and it was directed to be listed after three weeks. However, the case has been placed before this Court for the first time on 21.02.2025 only after receiving the order dated 31.01.2025 passed in Special Leave to Appeal (Crl.) No. 8036 by the Hon'ble Supreme Court.

74. Thereafter even during pendency of this Criminal Revision Application, initially both the parties have shown willingness to compromise the case by way of one time settlement before this Court and the petitioner was earlier ready to pay Rs. 5,00 Lakhs (Rs. 5,00,000/-) to the wife-opposite party no. 2 by way of one time settlement and to return her jewellerys and which was accepted by the wife-opposite party no. 2. The wife-opposite party no. 2 had fairly stated before this Court that she is willing to compromise on the said amount of Rs. 5,00,000/-, had petitioner returned certain jewellerys, which were being kept by her in-laws members. The petitioner had given the Demand Draft of Rs. 2,00,000/- to the opposite party no. 2, but the petitioner could not fulfill the other conditions for entering into the compromise. Later on, the wife-

opposite party no. 2 returned the said Demand Draft of Rs. 2,00,000/- to the husband- petitioner and the compromise failed only on the ground that the petitioner has not given certain jewellerys to the wife- opposite party no. 2 as it was also the part of the compromise entered into between them. Therefore, it is evident that the petitioner is trying to linger his case and he is not sincere in accepting the mode of compromise.

75. It would appear from the evidence of P.W.-1, Kokil Chand Mahato, P.W.-2, Nand Kishore Verma, P.W.-3, Bhola Prasad Barnwal and P.W.-4, Shiwani Kumari that the petitioner was getting monthly salary of Rs. 30,000/- in Kolkatta at the time of his marriage and hence it is presumed that the petitioner is capable to pay Rs. 6,000/- per month to his wife i.e. the opposite party no. 2 by way of interim maintenance from the date of filing of the Maintenance Case i.e. on 15.03.2019 and till the disposal of the Maintenance Case by the learned Court below.

76. It is evident that the petitioner is an able bodied person and he is an Engineer and a competent person.

77. Accordingly, this Court is of the view that the impugned Order dated 22.12.2022 passed by Sri Rajiv Ranjan learned Additional Principal Judge, Additional Family Court, Bermo at Tenughat, Bokaro in Original (Maintenance) Suit No. 78 of 2019 is set aside liable to due to hasty approach of the Court but subject to condition that the petitioner will pay Rs. 6,000/- per month by way of interim maintenance amount which can be treated partly as an interim maintenance amount for the survival of the opposite party no. 2 from the date of filing of Petition filed under Section 125 Cr. P. C. till the disposal of the Original (Maintenance) Suit No. 78 of 2019 and the

learned Court below shall allow the husband-petitioner to fully cross-examine the P.W.-3, Bhola Prasad Barnwal and P.W.-4, Shiwani Kumari and on the payment of cost of Rs. 1,000/- as has been directed by the learned Court below vide order dated 05.04.2022 as there is no rebuttal of income of the petitioner of Rs. 30,000/- per month as stated by the P.W.-1, Kokil Chand Mahato, P.W.-2, Nand Kishore Verma, P.W.-3, Bhola Prasad Barnwal and P.W.-4, Shiwani Kumari before the learned Court below.

78. Accordingly, this Court is inclined to interfere with the impugned order for the limited purpose. Therefore, the impugned Order dated 22.12.2022 passed by Sri Rajiv Ranjan learned Additional Principal Judge, Additional Family Court, Bermo at Tenughat, Bokaro in Original (Maintenance) Suit No. 78 of 2019 is set aside and the case is remitted back to the extent that the learned Court below shall give opportunity to the petitioner to cross-examine the P.W.-3, Bhola Prasad Barnwal and P.W.-4, Shiwani Kumari. The learned Court below is further directed to bring the photocopies of documents filed by P.W.-4, Shiwani Kumar, i.e. the applicant during her evidence.

79. Under the circumstances, the impugned order dated 22.12.2022 passed by Sri Rajiv Ranjan learned Additional Principal Judge, Additional Family Court, Bermo at Tenughat, Bokaro in Original (Maintenance) Suit No. 78 of 2019 is set aside with the direction to Sri Rajiv Ranjan learned Additional Principal Judge, Additional Family Court, Bermo at Tenughat, Bokaro or his Successor Court to decide the matter afresh within the certain time period as the matter is old one filed in the year 2019 and hence, learned Additional Principal Judge, Additional Family Court, Bermo at Tenughat, Bokaro is directed to allow cross-examination of P.W.-3, Bhola Prasad

Barnwal and P.W.-4, Shiwani Kumari on merit and may also permit the wife-O.P No.2 to examine any other witnesses in support of her case and who may be also examined by the husband-petitioner of this case on the same day within a period of four weeks from the date of receipt of the copy of this Judgment.

Thereafter, the learned Court below shall permit the husband-petitioner to produce his witnesses including himself in support of his case and who may be cross-examined on behalf of the wife-opposite party no. 2 within a period of six weeks after closure of evidence of the applicant-wife-the opposite party no. 2 before the learned Court below and thus, the learned Court below shall pass the Final Judgment within four (04) weeks without being prejudiced and influenced by the order passed by this Court and the learned Court below should record its own reasons in the final order.

80. Accordingly, the petitioner is directed to pay the maintenance of Rs. 6,000/- per month by way of interim maintenance to his wife-the opposite party no. 2 from the date of filing of the application under Section 125 of the Cr. P. C. i.e. on 15.03.2019 and the petitioner shall pay the arrears of maintenance amount @ Rs. 6,000/- per month from the date of filing of the application under Section 125 of the Cr. P. C. i.e. on 15.03.2019 till the final disposal of Original (Maintenance) Suit No. 78 of 2019 before the learned Additional Principal Judge, Additional Family Court, Bermo at Tenughat in three (3) equal instalment, which may be calculated by the parties as well as by the learned Court below in this case in light of the Judgment passed by this Court.

81. However, the petitioner will be entitled to cross-examine i.e. P.W.-3, Bhola Prasad Barnwal and P.W.-4, Shiwani Kumari only

after the deposit of first installment out of three installments of the entire arrears of the interim maintenance amount. Thereafter the petitioner will adduce his evidence by depositing 2nd installment of arrears of the interim maintenance amount of the opposite party no. 2 and it will be desirable that the petitioner will deposit 3rd installment in favour of the wife-opposite party no. 2 before passing of the final judgment by the learned Court below.

82. However, it will also open to the wife-opposite party no. 2 as well as the petitioner to examine their witnesses and themselves in support of their case even on the earlier date or time frame fixed by the Court as per their convenience, for an early disposal of the case.

83. Let a copy of this Judgment be sent to the learned Court below for the needful.

(Sanjay Prasad, J.)

Kamlesh/N. A. F. R.