

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.771 of 2024

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

Abdul Rehan Khan @ Abdul Raihan Khan

... .. Petitioner/s

Versus

The State of Bihar & Anr.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mrs. Shama Sinha, Advocate
For the Respondent/s	:	Mr. Pawan Kumar Chaurasia, APP
		Mr. Sanjay Kumar Ghosarvey, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 24-06-2025 The petitioner is the husband of the opposite party no. 2.

2. The instant criminal revision is directed against an order dated 14.06.2024 passed in M.R. Case No. 23 of 2021 by the learned Principal Judge, Family Court, Madhubani, upon an application filed by the opposite party no. 2 directing the petitioner to pay Rs. 12,000/- per month. The petitioner/husband has challenged the said order by filing the instant revision.

3. The learned Advocate on behalf of the petitioner has raised two preliminary objection against the mood and manner in which the Family Courts in general dispose of the maintenance cases including the case in hand.

4. It is submitted by the learned Advocate for the petitioner that the Family Courts Act, 1984 was not promulgated



to secure speedy disposal of adversarial litigation between husband and wife and other matrimonial disputes including the maintenance cases as commonly done in the civil and criminal courts. The main purpose and object of the Family Courts Act, 1984 was to take an endeavour to dispose of the matrimonial discord by process of conciliation and mediation in order to save the family and not by delivery of judgment to sever the family.

5. In support of her contention she refers to the statement of objects and reasons of the Family Courts (Amendment) Act, 2022. It is clearly stated in the statement of objects and reasons that the Family Courts Act, 1984 (66 of 1984) was enacted for the establishment of Family Courts with a view to promote condition in and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therein. Thus it is urged by the learned Advocate for the petitioner that the Family Courts Act, 1984 was enacted with a view to promote conciliation between the parties. The jurisdiction of the Judicial Magistrate, 1st Class in respect of trial of the proceedings under Section 125 of the Cr.P.C/144 of the B.N.S.S was taken away only to give the parties a platform for amicable settlement of the dispute.

6. The learned Advocate for the petitioner next refers



to Section 9 of the Family Courts Act, 1984 which runs as:-

“9. Duty of Family Court to make efforts for settlement.-- (1) In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.

(2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Family Court to adjourn the proceedings.”

7. Plain reading of Section 9 postulates that a mandatory duty is cast on the Family Court to make endeavour to assist and persuade the parties in arriving at a settlement in respect of subject matter of the dispute.

8. In this regard she also refers to the Family Courts



(Patna High Court) Rules, 2000 which was notified on 7th May, 2002. By virtue of Section 21 of the Family Courts Act, 1984, Rule 10 and 11 of the aforesaid rules clearly delineate the process of settlement and the procedure for arriving at settlement. Rule 10 says:-

“10. Settlement.- For the purpose of amicable settlements, the Courts shall maintain separate lists of-

(a) Institutions and organisations engaged in social welfare together with the names and addresses of representatives of such Institution and Organisation.

(b) Persons professionally engaged in promoting family welfare with their addresses.

(c) Persons working in the field of social welfare with their addresses.”

9. Rule 11 described procedure for arriving at settlement in the following words:-

“11. Procedure for arriving at settlement. (i) In every suit or proceeding the Judge may at any stage direct the parties to approach a Counsellor on the date and time fixed or on adjourned dates and time, as may be fixed by him, for counselling and amicable settlement of the dispute.

(ii) In case of default, the counsellor may refer the matter to the Judge and



thereupon, the Judge may pass such orders including award of cost as the circumstances of the case may require.

(iii) The Counsellor in discharge of his duties may visit the homes of the parties, interview their relatives, friends and employer, if any, and seek such information as may be deemed necessary from them and with the prior permission of the Judge may also refer the parties or either of them to any expert in the field of medicine or psychiatry or seek such assistance of any Institution, organisation or persons referred to in Section 5 of the Act.

(iv) The Counsellor shall maintain a diary of cases assigned to him, which shall contain the gist of the steps taken in the particular case.

(v) Information gathered by the Counsellor or any statement made before him or any note or report prepared by him shall be treated as confidential and he shall not be called upon to disclose such information, statement, note or report, nor he shall be asked to give evidence in respect of such information, statement, note or report in any Court except with the consent of both the parties.

(vi) The counsellor shall submit to the Judge a report containing the details of the homes of the parties, their personal income and status and their relationship with the child/children in order to assist the Judge in deciding the question of custody or



guardianship of any child/children of the marriage or amount of maintenance/alimony.

(vii) The Judge may ask the Counsellor to submit report on any other matter which the Judge considers necessary.

(viii) Copy of the report may be supplied to the parties on request.

(ix) The parties will be entitled to make their submissions on the report.

(x) Where the parties arrive at a settlement relating to the dispute or any part thereof before the Counsellor, such settlement shall be reduced to writing and signed by them and counter-signed by the Counsellor who shall immediately forward the same to the Court concerned.

(xi) Cohabitation between the parties in course of counselling or conciliation proceeding will not be deemed to be condonation of the matrimonial offence.”

10. Perusal of the rules suggest appointment of Counsellors, referring the cases to Counsellors for amicable settlement and the mood and manner in which the Counsellors shall act.

11. It is pointed out by the learned Advocate for the petitioner that no such provision was followed by the learned Principal Judge, Family Court at Madhubani.

12. The learned Advocate for the petitioner also



submits the Bihar Family Court Rules, 2011, where the procedure for appointment of Counsellor and other persons and the duties and functions of the Counsellor were stated in Rule 9 and 10 of the said rules. Rule 10-Duties and functions of Counsellors are important for our purpose and is quoted below.

“10. Duties and Functions of Counsellors :-

(i) The Counsellor shall assist the Court and advise the parties for settling their disputes, and he will do his best for reconciliation between the parties.

(ii) The Counsellor may visit the house of any of the parties and may interview their relatives, friends, acquainted persons or employees in connection with settlement of disputes between them.

(iii) No Counsellor shall visit the house of a lone female in connection with his duties without obtaining prior permission of the family Court.

(iv) Every information collected by Counsellors, every statement made before the Counsellors and every note or report prepared by Counsellors, shall be confidential and not to be disclosed to any person, except with the previous consent of both the parties to the suit or proceedings followed by the leave of the Family court.

(v) No Counsellor shall give evidence in any Court in respect of such



information, statement, notes or report.

(vi) In any suit or proceeding, if required by the Family Court, the Counsellor may submit a report to it, in respect of environment of house. Relationship of spouses and their children, income and standard of living of the concerned family.

(vii) The Counsellor shall not accept any fee or expenses from any of the parties, nor shall he act or plead for any of the parties. He shall only assist the Family Court in settling or deciding the dispute in peaceful and amicable manner.

(viii) The Counsellor shall submit his report regarding his efforts of reconciliation made for peaceful and amicable settlement of disputes between parties. The report shall be objective without blaming any of parties in case of failure of reconciliation. A copy of such report shall be given to the party on its request. Any party shall have right to make its submission on such report.

(ix) The Counsellor may advise, guide and assist the reconciled parties even after peaceful settlement arrived in between them.”

13. It is submitted by the learned Advocate on behalf of the petitioner that disposal of a case under Section 125 of the Cr.P.C without taking recourse to conciliation following the provision contained in Section 9 of the Family Courts Act, 1984



and the Rules made thereunder is illegal exercise of power vested upon the learned Principal Judge Family Court and the impugned order is liable to be set aside for non-compliance of statutory provision of the Act and the rules made thereunder.

14. Secondly, it is submitted by the learned Advocate for the petitioner that the learned Principal Judge Family Court failed to take recourse of the direction of the Hon'ble Supreme Court made in **Rajnesh v. Neha**, reported in **(2021) 2 SCC 324** and in **Aditi @ Mithi v. Jitesh Sharma**, reported in **2023 SCC Online SC 1451**.

15. The learned Advocate on behalf of the opposite party/wife on the other hand has produced the certified copy of the order-sheet of M.R. Case No. 23 of 2021. He refers to the order dated 24.06.2022, by passing of which the learned Principal Judge, Family Court at Madhubani referred the case to Mediation. Thereafter subsequent dates were fixed for submission of report by the Mediation Center. Ultimately, however, mediation failed and the trial court took up the case for disposal. Therefore, the trial court followed the conciliation procedure as directed by the Family Courts Act, 1984 and for such technical ground and otherwise good order cannot be set aside.



16. Having heard the learned Advocates for the parties and on perusal of the materials on record, this Court finds that there is no averment by either of the parties as to whether Counsellors were appointed in the Family Courts for conciliation as per Rule 10 of the Bihar Family Courts Rules, 2011. This Court also does not know if Rule 11 of the Family Court (Patna High Court) Rules, 2000 is being followed for the procedure for arriving at settlement.

17. It is needless to say that compliance of Section 9 of Family Courts Act, 1984 and the aforementioned Rules are obligated. If there are no Counsellors appointed by the Government and attached with the Family Courts and the cases are not sent in conciliation, the mandatory provision under the Family Courts Act and rules made thereunder are violated. In violation of the said rules, adversarial justice delivery system cannot be adopted. In the instant case, it is clear from the copy of the order-sheet which has been filed by the learned Advocate for the opposite party no. 2 that the learned Principal Judge, Family Court did not send the case record in conciliation.

18. For the reasons stated above, this Court directs the Registrar General of the High Court at Patna to collect and collate a report as to whether Counsellors have been appointed



in the Courts of the learned Principal Judge, Family Court in the State of Bihar. If the answer is yes, it is also to be informed about the remuneration of the Counsellors as well as the number of cases they are conciliating daily. After such report final order in the instant revision shall be passed.

19. This Court, however, is not unmindful to note that the opposite party no.2 is the wife of the petitioner. She is now at the stage of destitution living at her paternal home under the mercy of her brothers.

20. Therefore, during the pendency of the instant revision, this Court is inclined to make some provision as an interim measure for maintenance of the opposite party no.2.

21. Without prejudiced to the rights and contentions of the parties, the petitioner is directed to pay Rs. 8,000/- per month to the petitioner as an interim measure from the date of this order within 7th of the succeeding month.

22. The learned Registrar General, High Court at Patna is directed to submit the information as sought for within four weeks from the date of this order.

23. Let a copy of this order be sent to the learned Registrar General, High Court at Patna for information and compliance.



24. In the meantime, call for the lower court records.

(Bibek Chaudhuri, J)

aditya/-

U		T	
---	--	---	--

