

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.343 of 2012

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Md. Shahid Alam, son of Md. Moti Alam, resident of village- Shalipur, Sutturkhana, P.S.- Mufassil, District-Munger, at present Mohalla- Kunda, P.S.- Sheikhpora, District- Sheikhpora.

.... Petitioner/s

Versus

1. The State of Bihar
2. Majda Khatoon @ Jeba, wife of Md. Shahid Alam, resident of village- Shalimpur, Sutturkhana, P.S.- Mufassil, District- Munger, at present Mohalla- Kunda, P.S. Sheikhpora, District- Sheikhpora.
3. Patna High Court, Patna, through the Registrar General.

.... Opposite party/s

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Appearance :

For the Petitioner/s : Mr. Jawed Gaffar Khan
For the Opposite party No.1 : Dr. Rabindra Kumar, APP
For the Opposite party No.2 : Mr. Abdul Mannan Khan
Mr. Md. Najimul Hoda

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 19-08-2015

Heard the parties.

2. The petitioner is aggrieved by the order dated 23.01.2012 passed in Maintenance Case No. 14M of 2010 by the learned S.D.J.M., Sheikhpora, whereby claim of maintenance raised on behalf of the opposite party no. 2 under Section 125 Cr. P.C. for herself, being the legally wedded wife of the petitioner, and two minor children, born out of the wedlock of the petitioner and the opposite party no.2, has been allowed and the petitioner has been directed to pay maintenance @ Rs. 4000/- per month for the opposite party no.2 and @ Rs. 2000/- per month for her two minor children. By the aforesaid impugned order the claim of maintenance was allowed with effect from 21.08.2010 and the petitioner was directed to pay arrears of maintenance of Rs. 1,28,000/- in four equal instalments within a period of six months to the opposite party no.2.

3. This matter was heard earlier by a Bench of this Court and by order dated 04.04.2012 it was adjourned on the request of the learned counsel appearing on behalf of the opposite party no.2. However, till further order, the petitioner was directed to pay a consolidated amount of Rs. 1500/- per month to the opposite party no.2 and it was further directed that if the aforesaid amount is paid by the petitioner, then no coercive action shall be taken against him.

4. It would be relevant to mention here that when the impugned order dated 23.01.2012 was passed, the family Court had not been established in the district of Sheikhpura, as also in some other revenue districts in the State of Bihar.

5. In above view of the matter, when this case was listed before this Bench, the Law Secretary, Government of Bihar, Patna as also the Chief Secretary, Government of Bihar, Patna were issued several directions on different dates with respect to establishment of District Judgeship as also the Family Courts in the district of Sheikhpura as also in some other revenue districts in the State of Bihar, where such courts were not established despite recommendations made by the High Court in its administrative side. In view of the orders and directions issued by this Bench, the matter was heard and adjourned on different dates. Now, indisputably, the Family court as also judgeship have been established in the district of Sheikhpura, besides other remaining revenue districts in the State of Bihar, excepting the District Arwal. In above view of the matter, further monitoring regarding establishment of District Judgeship as also the family court was dropped by this Bench by order dated 08.07.2015 and the matter was directed to be listed for deciding the case of the parties on merit.

6. In the light of oral observations made by this Court on



previous occasions, a supplementary affidavit has been filed today on behalf of the petitioner stating therein that amount of maintenance @ Rs. 1500/- per month, as fixed by order dated 04.04.2012, was paid by the petitioner to the opposite party no.2 and remaining amount was deposited in the court of the learned Principal Judge, Family Court, Sheikhpura on 07.08.2015 and again on 10.08.2015. The facts stated there in that supplementary affidavit are not being controverted by the learned counsel appearing on behalf of the opposite party no.2.

7. So far the merits of the case is concerned, learned counsel appearing on behalf of the petitioner submits that actual income of the petitioner was not properly assessed by the learned S.D.J.M., Sheikhpura while passing the impugned order dated 23.01.2012 . He further submits that in view of establishment of the Family Court at Sheikhpura, it would be in the interest of the parties that entire matter is remitted back to the Family court, Sheikhpura with a direction to decide the claim of the opposite party no.2 vis-à-vis the petitioner for grant of maintenance under Section 125 Cr. P. C. strictly in accordance with law.

8. Learned counsel appearing on behalf of the opposite party no.2 submits that there is no dispute of relationship between the petitioner and the opposite party no.2 as also the two minor children, born out of their wedlock. According to him, the opposite party no.2 is the legally wedded wife of the petitioner. Therefore, learned S.D.J.M., Sheikhpura, has rightly allowed the claim of maintenance in terms of Section 125 Cr.P.C. However, he pleaded that taking into consideration the income of the petitioner and taking into consideration the fact that two minor children are now, going to school, quantum of maintenance is required to be enhanced.

9. After having heard the parties and taking into

consideration their submissions and further taking into consideration the fact that now Family Court has been established in the district of Sheikhpura, this Court is of the opinion that interest of justice shall be sub-served if the entire matter is remitted back to the learned Principal Judge, Family Court, Sheikhpura with a direction to decide the claim of maintenance of opposite party no.2 for herself as also her two minor children afresh strictly in accordance with law. It is ordered accordingly.

10. The parties shall be at liberty to adduce their further evidence in support of their respective claims. Learned Principal Judge, Family Court, Sheikhpura shall pass a fresh order after taking into consideration all the materials including fresh materials produced by the petitioner as also the opposite party no.2. However, till the matter is finally decided by the learned Principal Judge, Family Court, Sheikhpura, the petitioner shall keep on paying Rs. 1500/- per month to the opposite party no.2 by way of interim maintenance.

11. In order to expedite the matter, the petitioner as also the opposite party no.2 are directed to appear before the learned Principal Judge, Family Court, Sheikhpura, with a certified copy of the present order within a period of one month from today, whereafter he shall fix a firm date for proceeding and deciding the matter afresh.

12. The parties shall be at liberty to raise all the issues of fact and law before the learned Principal Judge, Family Court, Sheikhpura for granting appropriate relief in the aforesaid maintenance case, which may be available to them.

13. The present application stands finally disposed of with the observations and directions made above.

(Birendra Prasad Verma, J)

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