

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14976 of 2015

In
MA 380 of 2014

Prabhash Kumar

.... Petitioner/s

Versus

Mrs. Anupama Kumari

.... Respondent/s

with

Civil Writ Jurisdiction Case No.13322 of 2014

Smt. Anupama Kumari

.... Petitioner/s

Versus

The State of Bihar & Anr.

.... Respondent/s

Appearance :

(In CWJC No.14976 of 2015)

For the Petitioner/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr. Ranjan Kumar Sinha

(In CWJC No.13322 of 2014)

For the Petitioner/s : Mr. Ranjan Kumar Sinha

For the Respondent/s : Mr. Sc16- Abbas Haidar

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

7 09-12-2015 Heard learned counsel Mr. L.N. Das on behalf of the petitioner in C.W.J.C. No. 14976 of 2015 and learned counsel Mr. Ranjan Kumar Sinha on behalf of the petitioner in C.W.J.C. No. 13322 of 2014.

2. The husband-petitioner has filed C.W.J.C. No. 14976 of 2015 whereas the wife has filed the other writ i.e. C.W.J.C. No.13322 of 2014 against the order dated 24.02.2014 passed by the learned Principal Judge, Family Court, Patna in Matrimonial

Case No. 481 of 2011 whereby the Court below has granted Rs.15,000/- per month to pay the maintenance under Section 24 of the Hindu Marriage Act over and above Rs.3,000/-per month as condition imposed by the High Court for granting anticipatory bail. The husband filed writ application for setting aside the order on the ground that he is unable to pay the said amount whereas the wife has filed the writ application praying for enhancement of the maintenance according to the income of the petitioner-husband.

3. From perusal of the impugned order, it appears that the court below considered the facts that the petitioner-husband was earning Rs.22 lacs per annum as alleged by the wife which was not denied by him and directed the husband to pay Rs.15,000/- per month from the date of filing of the petition i.e. 10.12.2011. On 14.10.2015 the petitioner-husband was directed to deposit Rs.2,50,000/-(Two lacs fifty thousand) before the court below within one month and stayed the distress warrant issued against the husband. Admittedly, this order was never complied with by the husband and instead of complying the order the husband has filed the interlocutory application i.e. I.A. No. 8943 of 2015.

4. Learned counsel Mr. L.N. Das for the husband-



petitioner submitted that in fact on the date of order he could not have denied the allegation made by the wife to the effect that his yearly income was Rs.22 lacs but subsequent to passing of the order the petitioner became jobless and in support of his contention he has filed certificate granted by the company in which the petitioner-husband was employed. According to the learned counsel because the petitioner-husband is unable to pay the said amount, the order may be set aside particularly when the petitioner is paying Rs.3,000/- per month as condition imposed by the High Court while granting anticipatory bail. The learned counsel further submitted that wife is also well educated and, therefore, she can earn for her livelihood.

5. On the other hand, learned counsel Mr. Sinha appearing on behalf of the wife submitted that the court below has directed the husband to pay meager amount although it was not denied by the husband on the date of passing the order that he was earning Rs.22 lacs per annum. So far the case of the husband that he has left the job is concerned, it is false and the certificate granted by the alleged company is a conduct certificate and by no stretch of imagination it can be said that he left service in that company and has not joined service and usually it is seen that well qualified persons always leave service of one company to

join other company where they are offered higher salary. On these grounds the learned counsel submitted that the wife is entitled to more maintenance amount per month.

6. Perused the order passed by the Court below. The Court below while passing the order held that the allegation made by the wife that the husband's yearly income is Rs. 22 lacs is not denied by him. The husband did not disclose his monthly or yearly income. This Court in the case of **Veena Kumari Vs. Srikant @ Sanjay, 2004 (4) PLJR 533** has held that the petitioner-wife claims that here husband-opposite party is getting a salary of Rs.12,000/- per month whereas on behalf of the opposite party-husband it is argued that he was earlier in Navy but has left that job and is now earning a very meager amount but he has refrained from making any such statement in his counter affidavit. In the aforesaid circumstances this Court on two occasions directed the opposite party to produce his last pay slip along with supplementary affidavit to show that he was not in his earlier service and that he was earning much less. But more than two months have lapsed but no such pay slip has been produced. These circumstances clearly show that the claim of opposite party is baseless and hence he is avoiding compliance of even the Court's orders and is trying to take undue advantage of the

helplessness of the petitioner-wife and accordingly allowed the civil revision application.

7. In the present case, at our hand, by this Court on 14.10.2015 the husband was directed to pay Rs.2,50,000/- but admittedly the husband is not even complying the order of this Court and has obtained the stay of distress warrant by playing fraud on this Court and on that date he never stated before the Court that he cannot deposit any amount. Subsequently, only this application for modification has been filed that cannot be entertained. The intention of the petitioner appears writ large.

8. The Division Bench of this Court in the case of **Jitendra Kumar *alias* Jitendra Dhiman Vs. State of Bihar & Ors., 2003 (4) PLJR 523** has held that the petitioner-appellant i.e. the husband is purchasing time in litigation. This is an interim maintenance. This Court is not going to permit the petitioner-appellant to enter into some sort of *panchayat* to bargain on the maintenance which has been ordered. Insofar as the maintenance is concerned as was ordered by the Family Court the appellant shall pay maintenance including the arrears. In the present case, admittedly since the order passed by the court below the petitioner-husband has not paid a single farthing except the amount directed to be paid while granting anticipatory bail and is

moving to the Court for stay of the distress warrant, which was issued for non-compliance of the impugned order. While obtaining stay order, the petitioner was specifically directed but that order passed by this Court is not also complied with.

9. In view of the above facts and circumstances of the case in exercise of supervisory jurisdiction under Article 227 of the Constitution of India, this Court cannot go into the disputed questions of fact and record a finding regarding monthly income or yearly income of the husband or the wife and, therefore, cannot interfere with the impugned order as has been held by the Supreme Court in the case of **Radhey Shyam & Anr Vs. Chhabi Nath & Ors, (2015) 5 SCC 423**.

10. So far the wife's contention is that because the husband is getting Rs.22 lacs per year, the amount should be enhanced. With the writ application various documents have been produced by the petitioner-wife in proof of the fact that the husband is share-holder in another company and is getting more income from there and therefore, the petitioner-wife is entitled to lead the life in the same status of the husband. So far this writ application is concerned, as stated above this Court cannot investigate the income of the husband. It is admitted fact that wife is also a qualified lady and was working as Lecturer prior to

the marriage. Further she is getting Rs.3,000/- as directed by this Court in anticipatory bail and by the impugned order the court below has directed to pay Rs.15,000/- per month.

11. In such circumstances, as I have held above that in supervisory jurisdiction this Court cannot record clear finding regarding the income of either party at this stage, in my opinion, the Court has rightly passed the order directing the husband to pay the amount and, therefore, the same cannot be interfered with. Thus, both the writ applications are hereby dismissed.

12. Interim order, if any, is vacated.

(Mungeshwar Sahoo, J)

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