

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20636 of 2010

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1. Ramita Devi W/O Suraj Prasad Yadav R/O Vill.- Ekanger Dih, P.S.- Ekanger Sarai, Distt.- Nalanda.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Director General Of Police, Bihar, Patna
3. Sri Kundan Krishnan, the Then Senior Superintendent Of Police, Patna
4. Sri Amit Kumar, the Then Senior Superintendent Of Police, Patna
5. The Senior Superintendent Of Police, Patna
6. District Magistrate, Nalanda
7. Superintendent Of Police, Nalanda
8. Officer In Charge Ekanger Sarai Police Station, P.S.- Ekanger Sarai, Distt.- Nalanda
9. Suraj Prasad Yadav S/O Sheodhari Prasad Yadav R/O Vill.- Ekanger Dih, P.S.- Ekanger Sarai, Distt.- Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. REWTI KANT RAMAN

For the Respondent/s : Mr. Sunil Kumar Ravi, A.C. to A.A.G.-III

Mr. Ram Subhas Singh

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 20-08-2015

Heard the Counsel for the parties.

The writ application reveals the relentless legal fight between the husband and wife arising out of a proceeding for maintenance. Several rounds of litigations have already been fought between them. The present writ petition filed by the petitioner (wife) questions the legality of the order dated 30.9.2010 (Annexure-7) passed by the Senior Superintendent of Police, Patna.

By now it is crystalised that the petitioner is the first wife of the respondent no. 9 who married another lady and left the petitioner high



and dry. The wedlock between the petitioner and the husband (respondent no. 9) had produced one son who is living with the wife. In such circumstances, a proceeding under Section 125 of the Code of Criminal Procedure (for short 'the Code') was filed by the wife vide Misc. Case No. 4 (M) of 1997 for grant of maintenance. By order dated 18.1.2000, the Court directed for payment of a sum of Rs. 300/- per month to the wife and Rs. 200/- to the son by the respondent husband. The order did not satisfy either the wife or the husband. Both of them filed criminal revision application against order thereagainst. The Revisional Court by a common order dated 5.5.2001 rejected those revision applications. Dissatisfied therewith, the petitioner (wife) filed a proceeding in this Court vide Cr. Misc. No. 35565 of 2001 which was disposed of on 2.5.2002 permitting her to approach the Court for alteration/modification of the maintenance amount in accord with Section 126 of the Code. Such liberty was acted upon by the wife and an application for amendment/alteration/enhancement in the maintenance amount was filed on 10.6.2002 in the Court where the matter was pending. A prayer was made to grant her 1/3rd of the pay being drawn by the husband. Subsequently, she sought half of the pay. The Court, on a consideration of the matter, granted her maintenance in the sum of Rs. 900/- per month for herself and Rs. 600/- per month for the son. In all,



maintenance amount in the sum of Rs. 1500/- per month was directed to be paid. The order again did not satisfy either the wife or the husband. Both of them assailed the said order before this Court vide Cr. Misc. No. 25472 of 2003 (by wife) and Cr. Misc. No. 24830 of 2003 (by husband). This Court considered both the applications and by a common order dated 28.4.2006 (Annexure-1), while dismissing the application filed by the husband (respondent herein), allowed the application of the wife (petitioner herein) and the maintenance amount payable to the wife and the son was enhanced by Rs. 100/-. In other words, the total maintenance amount payable to the petitioner and her son was enhanced from Rs. 1500/- per month to Rs. 1700/-. Soon after disposal of the matter, the petitioner-wife again approached the Trial Court for enhancement of maintenance amount. The application filed by her was considered and rejected on 6.1.2007. Dissatisfied therewith, the petitioner(wife) filed Cr. Misc. No. 17411 of 2007. Said matter remained pending on the file of this Court. In the meantime, the petitioner, on the administrative side, approached the Senior Superintendent of Police, Patna for passing appropriate order considering her sufferings. The respondent Senior Superintendent of Police, Patna by Force Order bearing no. 3250/2008 passed on 12.4.2008 (Annexure-3) directed for entering the name of the petitioner(wife) in the nomination column of the service record so that



she may, in the event of death of the employee, get part of the pension/family pension. The Senior Superintendent of Police, Patna also directed for realization of 50 % of the salary of the husband (respondent no. 9) to be paid to the wife. The respondent-husband finding such order contrary to the direction of this Court filed a writ petition vide C.W.J.C. No. 2117 of 2010. The same was considered and disposed of by order dated 12.8.2010 (Annexure-6). This Court would extract relevant part of the said order hereinbelow:-

“Rather than stay the order of the Superintendent of Police, issue notice to the respondent no. 3 and then keep the matter pending before this Court for long years the application is disposed of with directions to the petitioner to bring the order of this Court in Cr. Misc. No. 25472 of 2003 and 24830 of 2003 to the attention of the Superintendent of Police who shall then proceed to issue notice to respondent no. 3 and decide matters appropriately afresh in accordance with law.”

The respondent Senior Superintendent of Police, Patna vide order dated 30.9.2010 (Annexure-8) passed the impugned order whereby the maintenance amount payable to the petitioner (wife) was made at par with the order passed by this Court under order dated 28.4.2006 (Annexure-1). The excess amount, if any, paid to the wife was directed to be adjusted.

After filing of the writ petition, few more events relevant for this case have taken place which are placed on record by way of rejoinder to the counter affidavit. The respondent Senior



Superintendent of Police by order dated 19.10.2011 directed for payment of 1/3rd of the pay of the respondent (husband) as maintenance amount for the petitioner (wife) and her son. Such order was passed after affording opportunity of hearing to both sides. The respondent husband challenged the aforesaid order dated 19.10.2011 before this Court in C.W.J.C. No. 15996 of 2012 which was permitted to be withdrawn vide order dated 2.1.2014 (Annexure-12 to the rejoinder). The petitioner (wife), in the light of the order passed by the Senior Superintendent of Police allowing 1/3rd of the salary of the husband (respondent no. 9) to be paid to her as the maintenance, sought permission of the Court to withdraw Cr. Misc. No. 17411 of 2007 which was filed by her against the rejection of her request by the Trial Court for enhancement/escalation of the maintenance amount. In this background, the present application is filed raising a grievance that the Senior Superintendent of Police while passing the order dated 30.9.2010 did not afford an opportunity of hearing to the petitioner.

Submissions have been made in support thereof. This Court does not feel it expedient to deal with those submissions in view of the fact that subsequent thereto, the Senior Superintendent of Police passed an order on 19.10.2011 for payment of 1/3rd of the salary of the husband to the petitioner (wife) after affording opportunity of hearing to both sides which, on challenge, was affirmed by this Court vide

order dated 2.1.2014 passed in C.W.J.C. No. 15996 of 2012. The petitioner (wife) too accepted the same and withdrew Cr. Misc. No. 17411 of 2007 which she had filed aggrieved by the rejection of her application for enhancement of the maintenance amount.

This Court would note that under order dated 30.9.2010 (Annexure-8) passed by the Senior Superintendent of Police, Patna, the excess amount, if any, paid to the wife was directed to be recovered/adjusted. Subsequently, the Senior Superintendent of Police passed an order dated 19.10.2011 directing for payment of 1/3rd of the salary of the respondent (husband) to the petitioner for maintenance of the petitioner and her son. The same appears to have been accepted by both of them. Considering the long litigations which the parties have fought, the economic status of the petitioner who has to support her growing son, the order of recovery/adjustment of the excess amount is quashed. One of the reasons for doing so was that there is no such direction passed by this Court in C.W.J.C. No. 2117 of 2010.

Nothing more warrants to be done in this case.

The writ application is disposed of.

(Kishore Kumar Mandal, J)

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