

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.20358 of 2015

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RANVEER KUMAR @ RANVEE KUMAR SINGH S/O SRI HARDEO
SINGH RESIDENT OF VILLAGE BASANTPUR, POLICE STATION
JANDAHA, DISTRICT VAISHALI.

.... PETITIONER/S

VERSUS

1. THE STATE OF BIHAR.
2. PINKI KUMARI @ PRIYANKA W/O RANVEER KUMAR, D/O
LATE DINESH SINGH RESIDENT OF VILLAGE CHAKAJMAT,
POLICE STATION DESARI (SAHDEI O.P.), DISTRICT VAISHALI.

.... OPPOSITE PARTY/S

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Appearance:

For the Petitioner/s : Mr. Madan Jeet Kumar, Adv.
For the Opposite Party/s : Mr. Murlidhar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

5 11-08-2015 Petitioner / husband being aggrieved by and

dissatisfied with an order dated 06.01.2015 whereby and

whereunder the learned lower court granted ad-interim

maintenance to a tune of Rs.2000/- in addition to Rs.1000/-

already granted by the High Court while considering prayer for

anticipatory bail, have preferred instant petition challenging the

same.

It has been submitted on behalf of petitioner that the
order impugned happens to be bad in law as well as on facts hence
is fit to be set aside. It has also been submitted that wife was
already getting Rs.1000/- per month in pursuance of order dated
28.03.2012 passed in Cr. Misc. No.42805 of 2011 (Annexure-2)
on account thereof, there was no requirement at her end to ask for
an ad-interim maintenance and in likewise manner, the court was

not competent enough to grant the same in addition to whatever been granted by the High Court. It has also been submitted that without ascertaining the source of means, the order impugned did not justify its legality.

At the other end, the learned counsel representing opposite party no.2 submitted that High Court had granted Rs.1000/- per month while granting anticipatory bail to the husband. Therefore, the aforesaid order could not be accepted as an order passed under Section 125 Cr.P.C. under the banner of ad-interim maintenance or final order because of the fact that both happens to be at two different pedestal requiring two different kinds of consideration. Therefore, the order impugned did not require inference.

The learned Additional Public Prosecutor fairly submitted that the order of the High Court while granting anticipatory bail to the husband relating to criminal case launched by the opposite party no.2 under Section 438 Cr.P.C. had imposed such condition which cannot be accepted as a barrier while adjudicating upon the present controversy.

Parties are non-else than spouse and it is needless to say that they are at logger heads on account of marital discord. Husband/petitioner had moved this Court for grant of an anticipatory bail under Cr. Misc. No.42805 of 2011 (Annexure-2)



in connection with substantial criminal case and while granting anticipatory bail vide order dated 28.03.2012 the court observed “subject to the conditions as laid down under Section 438(2) of the Cr.P.C. as well as subject to the conditions that the petitioner shall either keep the victim with due dignity or pay Rs.1,000/- (one thousand) per month as maintenance till any higher maintenance is decided by the competent court.” On plain reading of the operative portion of the order (Annexure-2) it is apparent that the aforesaid event has been inflicted as one of the condition.

So far scope of ad-interim maintenance is concerned, that had been introduced by way of amendment after having so many judicial pronouncement on this score to put safeguard upon vagrancy, destitute and further, is an interim arrangement till final adjudication. That being so, it cannot be clubbed as an order having absolute in nature rather it happens to be subject to variance in case circumstances so necessitate.

Now coming to the order impugned, it is apparent that ad-interim maintenance has not been granted to the applicant /wife/ opposite party no.2 rather it happens to be with regard to her minor child as is evident from the operative portion of the order impugned “O.P. Ranveer Kumar is directed to make payment Rs.2000/- as an ad-interim maintenance to the petitioner for their girl child.” and that happens to be reason behind that it was in

addition to Rs.1000/- which was one of the condition inflicted by the court while granting anticipatory bail subject to final adjudication after conclusion of the trial.

Now coming to the score of ascertainment of means, condition precedent before passing of an order even on the score of ad-interim it looks better to incorporate the finding recorded by the Hon'ble Apex Court in *Shamima Farooqui vs. Shahid Khan* reported in (2015) 5 SCC 705.

"14. Coming to the reduction of quantum by the High Court, it is noticed that the High Court has shown immense sympathy to the husband by reducing the amount after his retirement. It has come on record that the husband was getting a monthly salary of Rs.17,654/-. The High Court, without indicating any reason, has reduced the monthly maintenance allowance to Rs.2,000/-. In today's world, it is extremely difficult to conceive that a woman of her status would be in a position to manage within Rs.2,000/- per month. It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that woman suffers when she is compelled to leave her matrimonial home. The statute commands there has to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she

would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right.

16. Grant of maintenance to wife has been perceived as a measure of social justice by this Court. In *Chaturbhuj v. Sita Bai*, (2008) 2 SCC 316 it has been ruled that: (SCCp.320, para 6)

“6. ... Section 125 CrPC is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Captain Ramesh Chander Kaushal v. Veena Kaushal* (1978) 4 SCC 70 falls within constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya v. State of Gujarat* (2005) 3 SCC 636.”

17. This being the position in law, it is the obligation of the husband to maintain his wife. He cannot be permitted to plead that he is unable to maintain the wife due to financial constraints as long as he is capable of earning.

18. In this context, we may profitably quote a passage from the judgment rendered by the High Court of Delhi in *Chander Prakash Bodhraj v. Shila Rani Chander Prakash* AIR 1968 Del 174 wherein it has been opined thus:-

“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 a 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 to for reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him."

Accordingly, I do not see any cogent ground to interfere with the order impugned. Consequent thereupon, instant petition is rejected.

Learned counsel for the petitioner submitted that the learned lower court is not at all keen to dispose of instant petition expeditiously and that happens to be reason behind its pendency since 2011.

Accordingly, learned lower court is directed to expedite the matter subject to clearance of the arrear at the end of petitioner.

(Aditya Kumar Trivedi, J.)

Patna High Court
Dated 11th day of Aug., 2015
Prakash Narayan

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