

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.774 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- SAHARSA

Nilam Kumari, wife of Pradeep Yadav, Resident of village Pathra, P.S. Pipra, District Supaul. At present D/o Late Ganesh Chandra Yadav, resident of village Baijnathpur, Tola Baluaha, P.S. Saharsa, District Saharsa.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariate, Patna
2. Pradeep Yadav, son of Late Subodhi Yadav, Resident of village Pathra, P.S. Pipra, District Supaul.

.... Respondents

Appearance :

For the Petitioner : Mr. Pawan Kumar, Advocate

For the Respondents : Mr. Manish Kumar-3, AC to SC VI

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 21-04-2015

Heard learned counsels for the parties.

2. The present writ petition has been filed for a direction to the learned court of the Principal Judge, Family Court, Saharsa to dispose of the petitioner's application under Section 128 of the Code of Criminal Procedure (For short, "Cr.P.C.") filed for enforcement of the order dated 27.12.2010 passed in Miscellaneous Case No.46 of 2008 directing payment of maintenance under Section 125 of the Cr.P.C. for an amount of Rs.3000/- to the petitioner and Rs.2500/- for her daughter.

3. It is submitted that despite an application under Section 128 of the Cr.P.C. having been filed on 20.05.2011 claiming



the arrears of maintenance amounting to Rs.2,09,000/-, the same was not disposed of. Several petitions thereafter were filed, the last of them on 07.08.2014 according to which arrears of maintenance amount have swelled up Rs.3,90,500/- against which petitioner has received only Rs.12,000/- and a piece of land measuring 4 kathas valued at Rs.60,000/-. The net arrear on that date, according to the petitioner, was Rs.3,18,500/- .

4. This Court, vide its order dated 19.03.2015, called for a report from the Principal Judge, Family Court, Saharsa, who stated that efforts were being made to reconcile the matter between the parties. Thereafter by order dated 03.04.2015 an explanation was called for from him but the explanation once again repeats the narration of attempts for reconciliation.

5. This Court is constrained to express its disappointment with the approach of the learned Principal Judge who appears to be failing in discharge of statutory duty. It is not the case of the petitioner that she is seeking any reconciliation rather she has filed a petition under Section 128 of the Cr.P.C. specifically for enforcement of an order already passed in her favour with regard to the maintenance. The said provision is limited in its scope and is meant to ensure that a person in whose favour order has been passed for maintenance is not denied the fruit thereof. The Principal Judge

has repeatedly referred to the immovable property which the respondent no.2 had undertaken to transfer to the petitioner which, however, had already been transferred by sale deed to the petitioner as far back as in December, 2013 and it appears to be rather insufficient to meet the mounting arrears of maintenance. There appears little justification for the learned Principal Judge to have kept the matter hanging in the balance for almost four years and ignoring the repeated petitions being filed by the petitioner. This Court is unable to appreciate the insensitive attitude of the learned Principal Judge, Family Court, Saharsa.

6. Having regard to the entirety of the facts and circumstances of the case, this Court directs the Principal Judge, Family Court, Saharsa to dispose of the matter without undue delay and in any event, positively within a period of four weeks from the date of receipt/production of a copy of this order. It will be open to the petitioner to file details of the arrears of maintenance up-to-date before the court within a period of one week from today.

7. The writ petition, accordingly, stands allowed.

(Vikash Jain, J)

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