

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.823 of 2016**

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Bablu Kumar Singh

.... Appellant/s

Versus

Ruchi Devi

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Makardhwaj Upadhyay

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO**

ORAL ORDER

2 04-10-2016

Heard Mr. Rajiv Rai, learned counsel for the
petitioner.

Perused the impugned order dated 07.06.2016 passed
by the Principal Judge, Family Court, Bhojpur, Ara in
Matrimonial Case No. 81 of 2015 whereby the learned court
below has directed the petitioner to pay Rs. 5,000/- as monthly
maintenance to the wife respondent under Section 24 of the Hindu
Marriage Act.

The learned counsel for the petitioner submitted that
in fact the wife is an employee and is a teacher and is getting Rs.
25,000/- per month and is capable of maintaining herself.
Secondly, the application has been filed by the husband petitioner
under Section 9 of the Hindu Marriage Act for restitution of
conjugal right therefore, the respondent wife should come with
leave of the husband and if she will not come with leave of the
husband then a divorce decree is to be granted against her.
Learned counsel for the petitioner submitted that the husband is

unemployed but the court below without there being any basis or there being any evidence only on the ground that the husband is liable to maintain the wife has directed the petitioner to pay Rs. 5,000/- per month.

According to learned counsel for the petitioner he is leaving in joint family and has not separate source of income as such, the court below could not have directed the petitioner to pay Rs. 5,000/.

Perused the order passed by the court below. The application under Section 24 has been annexed as Annexure-2 and the reply filed on behalf of husband has been annexed as Annexure-3 to this Civil Miscellaneous Application. The court below considered the case of both the parties as pleaded in the application under Section 24 of the Hindu Marriage Act and thereafter on the basis of submission of the parties held that the petitioner being the husband has the duty to maintain the wife. It may be mentioned here that in support of the fact that the wife is employed or is getting salary of Rs. 25,000/- per month nothing has been brought on record. So far the income of the husband is concerned, from perusal of the impugned order, it appears that the he has denied the allegation made by the wife. In other words, he is not disclosing the income. It cannot be said that the husband is not liable to pay maintenance only because he has got no job. In the application under Section 24, the wife is giving details about income of the husband. However, considering this aspect of the

matter the court below passed order directing the petitioner to pay only Rs. 5,000/- per month under Section 24 of the Hindu Marriage Act.

In 2004 (4) PLJR 533 this court in the case of Veena Kumari Vs. Srikant @ Sanjay has held that if the husband is avoiding to declare his income, the contention of the wife regarding the income of the husband is to be accepted. This view has been supported by decision of the Supreme Court in the case Rita Dutta & Another Vs. Subhendu Dutta 2005(4) Supreme Court Cases 67. It appears that in the case before the Supreme Court it was found that wife is doing business and had sufficient income but then the Supreme Court said that it is not sufficient to maintain herself. In that case also the husband did not disclose the income. The Supreme Court held that “ we agree with the findings recorded by the High Court as well as the trial court that the respondent had not disclosed his true income. Therefore, in the present case the husband is not disclosing his income, it is not always required that only after evidence as adduced under Section 24 the petitioner husband should be directed to pay the monthly maintenance.

A Division Bench in the case of *2003(4) PLJR 523 Jitendra Kumar @ Jitendra Vs. State of Bihar and Others* has held that the maintenance awarded under Section 24 of the Hindu Marriage Act, at the rate of Rs. 2,000/- per month is not unreasonable. The Family Court may direct the appellant to pay

maintenance at any time after filing of the suit by the appellant himself. The order is purely an interim order. The petitioner appellant is producing time in litigation. This is an ad interim maintenance. This court is not going to permit the petitioner appellant to bargain on the maintenance which has been ordered. In the present case also, it cannot be said that the maintenance awarded by the court below under Section 24 of the Hindu Marriage Act is exaggerated considering the day to day expenses in these days. In the case before the Division Bench order was passed. It appears that the order was passed in the year 2002 and the amount was Rs. 2,000/-.

In view of the settled proposition of law only because husband is denying the income therefore, it is not required by the court to record evidence always. The quantum of maintenance awarded under Section 24 appears to be reasonable and proper in these days, therefore, I find no reason to interfere with the impugned order.

Accordingly, this Civil Miscellaneous Application is dismissed.

(Mungeshwar Sahoo, J)

siddharth/-

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