

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.3712 of 2016

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1. Anupriya, D/o Sri Ashok Kumar, R/o Campus of High School, Sabour
 School Staff's Quarter, P.S.- Sabour, District- Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Manish Raj, S/o Sri Naresh Prasad Singh, R/o Jhurkhuriya, P.O-
 Bahadurpur, P.S. Sabour, District- Bhagalpur at present, R/o 'Aagosh'
 Vasant Vihar Colony, Zeromile, P.O- Bhadurpur, P.S- Audogik Prakshetra,
 District- Bhagalpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. N.K. Agrawal, Sr. Advocate
 Mr. Anujit Sinha, -Advocate

For the Opposite Party/s : Mr. Parmeshwar Mahta (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 30-08-2016 Heard learned counsel for the petitioner as well as
 learned Additional Public Prosecutor.

2. The order impugned happens to be dated
 12.08.2015 passed by Principal Judge, Family Courts, Bhagalpur
 in Matrimonial (Divorce) Suit No. 299/2013 whereby and
 whereunder the learned Principal Judge had granted Rs. 5000/- per
 month as an ad interim maintenance as well as Rs. 25,000/- as
 litigation cost in accordance with Section 24 of the Hindu
 Marriage Act.

3. While challenging the order impugned, the
 petitioner had followed wrong path by way of filing Cr.W.J.C
 (Token) No. 069501/2015 whereupon office reported that

Cr.W.J.C. was not maintainable and further, the relief is amenable under Section 482 Cr.P.C. and that happens to be reason behind filing of instant petition under the heading of 482 Cr.P.C.

4. In terms of Section 7 of the Family Courts Act whereunder power of the Family Court has been identified, is found bifurcated in two parts. The first one deals with the suit so specified thereunder relating to which the Court has been vested with power to exercise the power so assigned to the District Court/Civil Courts while the latter part deals with the Chapter-IX of the Cr.P.C. and for that, the power so exercisable was that of Magistrate duly acknowledged under Cr.P.C. Therefore, by Section 7 of the Family Courts Act, the power of the Family Court is found duly demarcated. Not only this, while guiding the procedure to be followed up by the Family Court under respective arena, Section 10 of the Family Courts Act again identifies both the events independently. The suits governed in terms of Section 7(1) of the Family Courts Act was to be proceeded with as well as dealt with in accordance with C.P.C. while the controversy falling under Section 7 (2) of the Family Courts Act was to be proceeded with in accordance with Cr.P.C.

5. Because of the fact that there happens to be clear cut distinction of the exercise of power inconsonance with the



prayer so made, its subsequent resultant is to be carried out and be cared of in terms of Section 19, in case, the respective orders are brought up under challenge. Because of the fact that no remedy was available in terms of Section 19 of the Family Courts Act regarding intermediary order having been passed relating to the suit in terms of Section 7(1) of the Family Courts Act more particularly under Sections 24 of the Hindu Marriage Act, the matter went for consideration by the Full Bench in the case of ***Neelam Kumari Sinha v. Shree Prashant Kumar*** as reported in ***AIR 2010 Pat 184*** whereunder, it has been perceived that such interlocutory matters are perceptible in terms of Article 227 of the Constitution of India.

6. That being so, the initial step taken up by the petitioner by way of filing Cr.W.J.C. as well as the defect so pointed out by the office that instead of Cr.W.J.C., petition under Section 482 Cr.P.C. was maintainable with regard to order having been passed relating to dispute covered under Section 7(1) of the Family Courts Act happens to be misconceived and that being so, the instant petition is found non maintainable and in likewise manner, the office report happens to be.

7. At the present juncture, learned counsel for the petitioner submits that on account of wrong appreciation at both

the ends, the instant petition under the garb of 482 Cr.P.C. has been filed which the petitioner should be allowed to convert as a petition purported to be under Article 227 of the Constitution of India and is, accordingly, allowed.

8. However, for that purpose, it is expected that petitioner as well as office will make due exercise in getting the proper identification of this petition as a petition under Article 227 of the Constitution of India.

9. The aforesaid exercise must be completed within three weeks failing which, the instant petition will be deemed to be dismissed without further reference to the Bench.

(Aditya Kumar Trivedi, J)

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