

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1748 of 2016

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Divya Jyoti Shrivastava

.... Petitioner/s

Versus

Abhishek Kumar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gyanendra Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 20-10-2016 Heard the learned counsel for the petitioner and the learned
counsel for the respondent.

Perused the impugned order dated 28.08.2015 passed by the
learned Principal Judge, Family Court, Patna in Matrimonial Case
No.5717 of 2014 whereby the learned Court below rejected the
petition for grant of maintenance under Section 24 of the Hindu
Marriage Act.

From perusal of the impugned order, it appears that the
Court below recorded finding that the petitioner is employee and
earning handsome amount as her salary as such she is quite
capable to maintain herself.

The learned counsel for the petitioner submitted that the
Court below recorded this finding on the basis of inadmissible
evidence and the Court below did not consider the fact that
marriage took place in the year 2013 and according to the



petitioner, prior to marriage the petitioner left job and, therefore, obtained the experience certificate. The Court below without considering this aspect of the matter relied upon salary certificate of the year 2008 presumed that the petitioner must be getting handsome salary now-a-days. According to the learned counsel after marriage, the petitioner has already left the job and now is unable to maintain herself as father is bed ridden and mother has died and the husband has deserted her. The learned counsel further submitted that the finding is perverse and, therefore, based on no evidence, the Court below has not considered any evidences produced by the husband in support of the fact that the wife is working after the marriage.

On the other hand, the learned counsel for the respondent submitted that the petitioner is M.tech and, therefore, she is capable of maintain herself, therefore, even if she has resigned from the service then also she is not entitled any maintenance under Section 24 of the Hindu Marriage Act.

As stated above, from perusal of the impugned order, it appears that the Court below relying on the admitted case of the parties that the petitioner was employee in 2008 presumed that she is still employee and is earning handsome salary. This is nothing but presumption only. There is no positive evidence. Therefore,

this finding recorded by the Court below is perverse. The specific case of the petitioner is that she is not working and she has already resigned prior to marriage and is now unable to maintain herself.

In view of the above facts and circumstances of the case, this impugned order is set aside and this matter is remanded back to the Court below for afresh consideration after evidence that may be produced by the parties.

Thus, this writ application is allowed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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