

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.965 of 2016**

=====

Sanjay Kumar Sinha

.... Appellant/s

Versus

Smt. Asha Kumari & Anr

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Prabhu Narayan Sharma

For the Respondent/s : Mr.

=====

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

ORAL ORDER

2 27-10-2016

Heard learned counsel for the petitioner.

2. Perused the impugned order dated 15.07.2016 passed by the learned Principal Judge, Family Court, Begusarai in (M.T.) Divorce Case No. 42 of 2010, whereby the learned court below directed the petitioner to pay Rs. 12,000/- (Rs. 8000 to the wife plus Rs. 4000/- to the daughter, Asha Kumari) and directed the petitioner to pay litigation cost of Rs. 2500/- per month.

3. Learned counsel for the petitioner submitted that the court below wrongly directed the petitioner to pay Rs. 12000/- particularly, when the petitioner is paying the maintenance of Rs.11000/- per month as directed by the court below in a proceeding under Section 125 Cr.P.C. Further the court below has not considered the fact that after filing of the criminal case under Section 498A Cr.P.C., the petitioner was taken into custody, as such, he has been removed from the service and is now unemployed. The court below without considering this aspect of

the matter has passed the order, therefore, the order is illegal, as such, is liable to be set aside. According to learned counsel, the petitioner has already deposited Rs. 1,25,000/- in the court below in compliance of the order passed under Section 125 Cr.P.C. proceeding.

4. Perused the impugned order, from perusal of the impugned order, it appears that it is not the fact that the court below has not considered the order passed in the proceeding under Section 125 Cr.P.C. but the fact is that the court below considered that in spite of the order passed in the proceeding under Section 125 Cr.P.C., the petitioner is not paying the maintenance amount and, therefore, the wife has filed execution case for realization of the maintenance amount. Further the husband of the petitioner has filed the miscellaneous case praying for setting aside the order passed by the court in the proceeding under Section 125 Cr.P.C. So far deposit of Rs.1,25,000/- is concerned, the court below clearly recorded finding that only bald statement has been made but no proof has been produced by the husband-petitioner and accordingly, the court below directed the petitioner to pay the above amount. Admittedly, the petitioner is an Engineer. His case is that he has been dismissed from the service.

5. Now, therefore, after considering the facts of the case and the case pleaded by both the parties, learned court below recorded this finding of fact. The Hon'ble Supreme Court in the

case of *Jai Singh Vs. M.C.D.* reported in *2010 (9)SCC 385* has held that the High Court cannot lightly or liberally act as an appellate court and re-appreciate the evidence. Generally, it cannot substitute its own conclusion for the conclusions reached by the courts below. The Hon’ble Supreme Court in that case held that the High Court is expected to exercise the supervisory jurisdiction, which is wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It cannot be exercised like a “Bull in China shop” to correct all errors of judgment of court or tribunal acting within the limits of its jurisdiction. This correctional jurisdiction must be exercised in cases where the orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.

6. In view of the above facts, in my opinion, in exercise of supervisory jurisdiction under Article 227 of the Constitution of India, the impugned order cannot be interfered with as the order neither suffers from jurisdictional error nor the order has been passed in the manner not permitted by law or it has occasioned failure of justice. Thus, this civil miscellaneous application is dismissed.

brajesh/-

U			
---	--	--	--

(Mungeshwar Sahoo, J)