

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5716 of 2015

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1. Asmita W/o Vikas Upadhyay, D/o Sri Mahavir Tripathi resident of Flat no. 303, Manorma Shambhu shri Apartment, H.P. Petrol pump lane P.O. Sadakat Ashram P.S.-Patlilputra, District-Patna.

.... Petitioner/s

Versus

1. Vikas Upadhyay S/o Sri Sarvanand Upadhyay, permanent resident of Village-Mahudahi, P.O.-Nathmalpur, P.S.-Barahara, District-Bhojpur present residing at Rental Flat No. 62 West Lohia Nagar, P.O.-LohiaNagar, P.S.-Kankarbag, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

2 19-02-2016 Heard learned counsel, Mr. Ranjan Kumar Sinha, appearing on behalf of the petitioner.

2. By the impugned order dated 07.05.2014, the learned Principal Judge, Family Court, Patna in Matrimonial Case No. 134 of 2013 has granted maintenance of Rs. 5000/- per month and lump sum Rs. 15,000/- as litigation cost under Section 24 of the Hindu Marriage Act to the petitioner.

3. From perusal of the impugned order, it appears that the court below considered that nothing was brought on record regarding the monthly income of the husband. The petitioner-wife also did not produce any paper to show the monthly income of her husband. The case of the husband is that although he was



employed earlier in ICICI Bank but, subsequently, he has resigned because of tension given by the wife-petitioner. The court below considered all these aspects of the matter and also considering the fact that the wife is also getting Rs. 750/- per month in criminal case under Section 498-A of the Indian Penal Code and on the basis of these facts, directed the husband to pay monthly maintenance of Rs. 5000/-

4. According to learned counsel for the petitioner, the husband approached the Court with unclean hand and suppressed his monthly income and that the amount, which was being given to her in criminal case, has now been stopped. Further according to the petitioner, in view of the various decisions of Patna High Court, Delhi High Court and the Hon'ble Supreme Court, she is entitled to at least 1/3rd of the income of the husband.

5. So far the case of this petitioner as has been submitted by the learned counsel is concerned, it is a pure question of fact and in exercise of supervisory jurisdiction under Article 227 of the Constitution, this Court is unable to receive evidence and/or record any evidence regarding as to whether the husband is still employed or unemployed or that Rs. 750/-, which was being paid to the wife, has been stopped. Therefore, if the petitioner so desire, may approach the court below by filing appropriate

application and if such application is filed, the court below shall decide the matter according to law.

6. So far this application under Article 227 is concerned, in view of the above fact, the impugned order cannot be interfered with in supervisory jurisdiction. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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