

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.892 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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Archana Kumari, wife of Shailesh Sharma, daughter of Rajendra Prasad Singh,
resident of Mohalla-Mahatma Gandhi Nagar, P.S.-Patrakar Nagar, District-Patna.

.... Petitioner

Versus

Shailesh Sharma, son of Late Sheodutt Sharma, resident of Quarter No. CD-146,
Sector-3, Hatia, P.S.-Dhurba, District-Ranchi, Jharkhand, currently residing at
Manager, Asian Paints Ltd., Lal Bahadur Shastri Marg, Mumbai-400080

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Anuj Kumar, Advocate

For the Respondent/s : Mr. Rajendra Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 26-07-2016

In the present application filed under Articles 226 &
227 of the Constitution of India, the prayer of the writ petitioner in
para 1 is as under:-

“1. That the petitioner seeks indulgence of this
Hon’ble Court for the following reliefs:-

(A) A writ in the nature of Mandamus or any other
appropriate order or orders direction commanding
the Principal Judge, Family Court, in of
Maintenance Case No. 127(M) of 2007 to conclude
the maintenance Case No. 127(M) of 2007
forthwith, which has not been concluded in terms

of the own order of the learned Additional Principal Judge, Family Court, Patna.

(B) To any other reliefs to which the petitioner has been found entitled to.”

2. It is submitted by Mr. Anuj Kumar, learned counsel for the petitioner that the petitioner was deserted and thrown out of her matrimonial house by the opposite party. This resulted into filing of Maintenance Case No. 127(M) of 2007 was under Section 125 of the Code of Criminal Procedure (for short ‘CrPC’) in the year 2007 by the petitioner. After hearing the parties and after considering monthly income of the opposite party, the learned Additional Principal Judge, Family Court, Patna, vide order dated 15.03.2010, passed an order directing the opposite party to pay Rs. 8000/- per month from the date of the order as interim maintenance for her and her 9 years old minor daughter, who is studying at Open Mind Birla School, Patna. The aforesaid maintenance case was fixed for arguments on 15.05.2013. However, the argument could not take place prior to 27.08.2014. On 27.08.2014, the petitioner’s argument started and it concluded on 3rd September, 2014. Since 3rd September, 2014, argument of the opposite party started and it has not concluded as yet. The petitioner filed an application for early disposal of case on 20th January, 2015. A reply to the said application was filed by the opposite party on

10th February, 2015 taking the plea that the petitioner was not allowing another case, i.e. Matrimonial Case No.302 of 2009 to conclude, which has been filed by the opposite party for divorce.

3. It is further submitted that on 22nd April, 2015, the learned Additional Principal Judge, Family Court, Patna fixed 28.04.2015 and the matter was thereafter adjourned on several occasions for argument on behalf of the opposite party and it has not concluded till date.

4. It is submitted that the petitioner is left with no option but to move an application for a direction to the Additional Principal Judge, Family Court, Patna for expeditious disposal of the maintenance case.

5. *Per contra*, Mr. Rajendra Prasad Singh, learned counsel for the respondent has submitted that the respondent is paying the interim maintenance to the petitioner as per order passed by the court. It is the petitioner, who had challenged the aforesaid order of interim maintenance dated 15.03.2010 by filing Criminal Revision No. 497 of 2010, which was finally heard on 12th February, 2013, but when the revision application was going to be dismissed the counsel for the petitioner prayed to withdraw the said case with a liberty to raise the points at appropriate stage in trial and, accordingly, the said revision application was dismissed as



withdrawn vide order dated 12.02.2013 passed by this Court. He has submitted that the respondent husband has filed Matrimonial Case No. 302 of 2009 on 13th May, 2009 against his wife for obtaining decree of divorce under Section 13 of the Hindu Marriage Act, which is also pending before the learned Additional Principal Judge, Family Court in which case the petitioner is deliberately delaying proceedings.

6. Mr. Singh has further submitted that the respondent is arguing the case before the Principal Judge since 08.09.2014 and it is petitioner who is creating obstruction in disposal of the case. Due to the obstruction created by the petitioner or her advocate, the argument could not be concluded till date.

7. I have heard the parties and perused the record.

8. Be it noted that in reply to the court's order dated 14.12.2015, the learned Additional Principal Judge, Family Court, Patna has also submitted his report on 21st December, 2015 explaining the reason for the delay caused in disposal of Maintenance Case No. 127(M) of 2007. From perusal of his report, it would appear that the evidence on behalf of the parties has been closed. The argument of the petitioner in Misc. Case No. 127(M) of 2007 has also been closed and the case is pending for argument on behalf of the respondent husband. It would also appear that issues



have already been framed in Matrimonial Case No. 302 of 2009 and on 21st May, 2015, when the examination-in-chief of respondent Shailesh Sharma was being recorded, the lawyer of the petitioner opposed the recording of his examination-in-chief and filed a petition in the court contending therein that he will challenge the order of the court. Under that circumstance, the examination-in-chief of the respondent was stopped in Matrimonial Case No. 302 of 2009. He has submitted that though the Court is willing to proceed in both the cases, but due to non-cooperation of the parties both the cases are pending in the court.

9. Be that as it may, there is no dispute to the fact that there are two proceedings going on before the court of the learned Additional Principal Judge, Family Court, Patna between the petitioner and the respondent. One of the proceedings is for maintenance whereas the other one is for divorce. The scope of inquiry and hearing are limited under Section 125 of the CrPC. Section 125 of the CrPC provides speedy remedy by a summary proceeding to enforce liability in order to avoid vagrancy by compelling those who can support those who are unable to support themselves. This section gives effect to the duty of a man to maintain his wife, children and parents so long as they are unable to maintain themselves. The delay of over eight years in disposal of a

maintenance case cannot be justified on any ground. At the same time, I must observe that if any of the party is creating any obstruction in disposal of a case, the court has ample power to deal with such a situation. The court cannot make it an excuse for the delay being caused in disposal of a case specially, when the case is at the stage of final argument and one of the parties has concluded the argument as back as on 3rd September, 2014.

10. In that view of the matter, I direct the learned Additional Principal Judge, Family Court, Patna to dispose of Maintenance Case No. 127(M) of 2007 within two months from the date of receipt/production of a copy of the order.

11. The application is disposed of.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	
CAV DATE	N.A.
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