

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35831 of 2013

Arising out of Maintenance Case No.165 Year 2011 District- BHOJPUR

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Satyendra Kumar, son of Sri Chhapit Ram, resident of village- Gaura, Police Station- Behea in the District of Bhojpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Priyanka Devi, w/o Satyendra Kumar, d/o Rameshwar Ram, presently residing in Mohalla- Maulabagh, P.S.- Ara Nawada, Dist.- Bhojpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Pd. Singh, Sr. Advocate.
Ms. Anital Kumari Singh, Advocate
Mr. Bimal Kumar, Adv.
For the State : Mr. M.K. Khare, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 11-08-2016

In the present application preferred under Section 482 of the Code of Criminal Procedure, the petitioner has challenged the order dated 26.7.2013 passed by the Principal Judge, Family Court, Bhojpur, Ara, in Maintenance Case No. 165 of 2011, by which he has been directed to make payment of Rs.3,000/- as ad-interim maintenance allowance and Rs.5,000/- as cost of litigation to the opposite party no. 2 under Section 125 of the Code of Criminal Procedure.

2. The opposite party no. 2 filed an application under Section 125 of the Code of Criminal Procedure before the Principal Judge, Family Court, Ara, on 25.10.2011 stating therein that she was



married to the petitioner according to Hindu rites and rituals on 17th August, 2010. It is alleged that after one week of the marriage, the petitioner and his family members started subjecting her to cruelty for non-fulfillment of demand of dowry and on 7th November, 2011 she was expelled from her matrimonial home. The efforts made by her family members to resolve the matter amicably went unheaded, as the petitioner declined to keep her in matrimonial home. She has stated that after being expelled from her matrimonial home, she is staying with her parents and has got no independent source of income. The financial condition of her parents is also not good. It is also stated that the petitioner has done Hotel Management course and is employed in Delhi, where he is getting Rs.40,000/- as monthly salary. It is also stated that the petitioner has income of Rs.50,000/- per annum from other sources. On these grounds, the opposite party no. 2 claimed maintenance amount of Rs.20,000/- per month.

3. On receipt of notice, the petitioner filed his show cause denying allegation of subjecting the opposite party no. 2 to any cruelty for non-fulfillment of demand of dowry. He has also denied the claim of the opposite party no. 2 that the he is earning Rs.40,000/- per month.

4. However, after hearing the parties and also after taking evidence on behalf of the parties, the Principal Judge, Family Court, Ara, allowed ad-interim monthly maintenance of Rs.3,000/-

and Rs.5,000/- as cost of litigation in favour of the opposite party no. 2 vide impugned order dated 26.7.2013.

5. Challenging the aforesaid order dated 26.7.2013, Mr. Akhileshwar Prasad Singh, learned Sr. Counsel for the petitioner has submitted that the impugned order is wholly illegal and arbitrary. The petitioner has got no independent source of income as the petitioner is still pursuing his studies. He has further stated that there is absolutely no truth in the contention of the opposite party no. 2 that the petitioner has got income from other sources. He has submitted that the financial condition of the petitioner does not allow him to pay the ad-interim maintenance amount awarded by the Court below in favour of the opposite party no. 2. It is also contended that the petitioner is willing to keep his wife in her matrimonial home, but she is not willing to live with him.

6. I have heard learned counsel for the petitioner and perused the record. In my considered opinion, the argument advanced by the learned Sr. counsel appearing on behalf of the petitioner is fit to be rejected. His contention is diametrically opposite to the show cause filed by him before the Court of Principal Judge, Bhojpur, Ara, as contained in Annexure-3 to the present application. Paragraph 12 of the said show cause reads as under:

“That it has been wrongly stated by the petitioner in her petition that the salary of the opposite party is Rs.40,000/- per month rather in fact his salary is

Rs.16,000/- per month, and in that salary he has to maintain in Delhi and to maintain the parents living in the village”

7. Once the petitioner has accepted before the Principal Judge, Family Court, Bhojpur, Ara, that he is employed and is earning a sum of Rs.16,000/-, he cannot turn back and take a different plea by saying that he has no source of income and is still pursuing his studies.

8. Taking into consideration the facts and circumstances of the case, I see no illegality in the order passed by the Principal Judge, Family Court, Bhojpur, Ara, in connection with Maintenance Case No. 165 of 2011.

9. Accordingly, the application, being devoid of merit, is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
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