

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28675 of 2015

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

1. Sheodhayan Choudhari @ Sheodhayan Chodhay Son of Naresh Choudhari
resident of village - Chanpur, P.S. - Deo, District - Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Bibha Devi Wife of Sheodhayan Choudhari resident of village Chandpur, P.S. -
Deo, District - Aurangabad, At present Daughter of Surjdeo Pandey Village -
Bairwan Loknath, P.S. - Mali, District - Aurangabad.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Krishna Prasad Singh, Sr. Adv.
Mr. Santosh Kumar Pandey, Adv.
For the State : Mr. Rajeev Nayan, APP
For Opposite Party No.2 : None.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 04-03-2016

Heard learned counsel for the petitioner. Despite valid
service of notice upon the Opposite Party No.2, she has chosen not to
appear either in person or through an advocate.

2. By the present application preferred under Section 482
of the Code of Criminal Procedure (for short "CrPC"), the petitioner
seeks quashing of the order dated 30.05.2015 passed by the learned
Principal Judge, Family Court, Aurangabad in Maintenance Case No.
89 of 2014, whereby he has directed the petitioner to pay Rs. 5000/-
(five thousand) per month to the Opposite Party No. 2 as interim
maintenance allowance under section 125 of the CrPC.



3. The opposite party No. 2 had filed Maintenance Case No. 89 of 2014 in the court of the Principal Judge, Family Court, Aurangabad stating therein that she was married to the petitioner about 6 years ago as per Hindu rites and rituals and immediately after the marriage, the petitioner started demanding Honda City car and on account of non-fulfillment of the demand, she was subjected to cruelty in various ways and was ultimately expelled from her matrimonial home on 2nd June 2014 after retaining all her ornaments and other properties. It had also been stated in the application that the petitioner owns 15 bighas of cultivable land, a Scorpio car, two tractors and a brick-kiln and earns Rs. 2 lacs per month. It has further been contended that despite having sufficient means, the petitioner has not only neglected her, but has forced her to lead a life of destitute. She has contended that she has no independent source of income and thus is not able to maintain herself.

4. Learned counsel for the petitioner has contended that the petitioner does not own or possess any land or any vehicle. He has submitted that the Opposite Party No. 2 is capable to maintain herself and the allegation that she has no independent source of income is not true. It has also been contended that the petitioner works under a contractor as a clerk and is earning Rs. 3500/- only per month. Based on these submissions, learned counsel for the petitioner has

submitted that while passing the impugned order, the learned Principal Judge Family Court has failed to take into consideration the pleadings made by the petitioner and has arbitrarily directed the petitioner to pay a sum of Rs. 5000/- as ad-interim maintenance allowance.

5. On hearing learned counsel for the petitioner, I find that the marriage of the petitioner with the Opposite Party No. 2 is not in dispute. The petitioner has also not disputed the fact that the opposite party no.2 is not living together. The only dispute which has been raised by the petitioner is that he is earning about Rs. 3,500/- per month only and has got no landed property or any other income from any other source and the opposite party no. 2 is capable to maintain herself.

6. As noted above, despite valid service of notice, the Opposite Party No. 2 has chosen not to contest the matter.

7. Since the provision prescribed under section 125 of the CrPC is a measure of social justice to protect women and children and the object is to prevent vagrancy and destitution, in my view, the court below has not erred in law in awarding interim maintenance allowance to the Opposite Party No. 2. The order passed by the learned Principal Judge, Family Court, Aurangabad is interim in nature and it is always subject to change after the parties lead their

evidence. However, in view of the submission made by the learned counsel for the petitioner, which has not been contested by the Opposite Party No. 2, the interim maintenance awarded in favour of the Opposite Party No. 2 in Maintenance Case No. 89 of 2014 by the learned Principal Judge, Family Court, Aurangabad is directed to be reduced from Rs. 5000/- to Rs. 3500/-.

8. With the aforesaid modification in the impugned order dated 30.05.2015, the application is disposed of.

(Ashwani Kumar Singh, J)

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