

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5784 of 2015

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1. Arbind Kumar Patel, son of Sri Durga Prasad Singh, Resident of Village-
Bhagwatipur, P.S. Chainpur, District- Kaimur.

.... Petitioner

Versus

1. State of Bihar through the Secretary, Department of Home Affairs, Govt.
of Bihar, Old Secretariat, Patna.
2. Chanchal Kumari, Wife of Arbind Kumar Patel and Daughter of Sri
Rajvansh Singh, Resident of Village- Ajhashpur, P.S. Bhabhua, District-
Kaimur.

.... Respondents

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Appearance:

For the Petitioner : Mr. Dr. Pankaj
For the Respondents : Mr. Sanjay Pandey- Gp21

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

5 29-03-2016 Heard Dr. Pankaj, learned counsel for the petitioner
and Mr. Jitendra Singh, learned counsel for the respondents.

This application under Article 227 of the
Constitution of India has been filed by the petitioner for a
direction to the Principal Judge, Family Court, Kaimur at
Bhabhua to dispose of the application filed by the petitioner on
18.11.2014. Secondly further prayer has been made for a
direction to the Court below for DNA test of the child born to the
wife for determining the parenting of the child and further for
setting aside the order dated 16.01.2014 and also for a direction
to the Court below to pass a fresh order after considering the
payment done by the petitioner.

It appears that a supplementary affidavit was filed

seeking permission to challenge the subsequent orders passed by the Court below dated 08.04.2013 and 10.02.2015. In view of the submissions of the learned counsel, the petitioner was permitted to challenge the said orders also in this application under Article 227 of the Constitution of India.

It appears that Divorce Suit was filed by the petitioner against his wife on the ground of cruelty and unchastity of the wife. It is alleged by the petitioner that his wife has illicit relation with the husband of her sister. The child born to the wife is not the offspring of the petitioner and therefore application was filed for DNA test. His wife filed an application under Section 24 of the Hindu Marriage Act and the Court below in the year 2009 directed the petitioner to pay Rs. 5000/- per month as maintenance.

The learned counsel for the petitioner submitted that although the petitioner is not making payment regularly but many times petitioner has paid substantial amount to the wife and the Court below should not pass subsequent order issuing direction for recovery of Rs. 5000/- from the salary of the petitioner and the Court below should further pass a fresh order as to the total amount for which the petitioner is liable to pay and that the petitioner is ready to pay the balance amount on instalment basis.

On the other hand, Mr. Jitendra Singh, the learned counsel for the respondents submitted that petitioner is not obeying the order passed by the Court below in the year 2009 and therefore the Court below has rightly passed the order directing to deduct the amount from the salary of the petitioner.

From the perusal of the order passed by the Court below, it appears that admittedly the petitioner has been directed to pay monthly maintenance @ Rs. 5000/- per month from the year 2009. So far the submission of the learned counsel for the petitioner that the substantial amount has been paid, is concerned, it cannot be decided by this Court in exercise of supervisory jurisdiction. So far the submission that Court below has directed to deduct Rs. 5000/- from the salary of the petitioner is concerned, it may be mentioned here that admittedly the petitioner is not complying with the direction of the Court below since 2009 i.e. for last 7 years. Therefore, in my opinion, the petitioner is not entitled to invoke the supervisory discretionary jurisdiction under Article 227 of the Constitution of India as held by the Supreme Court in the case of Shalini Shyam Shetty—v- Rajendra Shankar Patil, (2010) 8 SCC 329. The conduct of the petitioner shows that he is adamant to harass his wife. He is not complying with the order passed by the Court below since last 7 years and therefore, in my opinion, in supervisory jurisdiction,

this Court cannot fix any instalment particularly when the petitioner had not challenged the original order passed by the Court below directing the petitioner to pay the interim maintenance. So far direction to the Court below to dispose of the application for DNA test is concerned, it may be mentioned here that the application has been filed before the Court below and if the petitioner presses the same, the Court below shall consider the same and pass the order according to law but for that purpose the writ application under Article 227 of the Constitution of India is not maintainable.

However, the Court below shall dispose of the application according to law.

In the present case, allegation is made regarding unchastity and adultery of the wife but it may be mentioned that the person who is said to have illicit relation with the wife is not made party according to Rule 16 of the Patna High Court Rules. In view of the above facts, the petitioner is not entitled for any relief claimed in exercise of supervisory jurisdiction under the Constitution of India. However, the Court below shall consider the amount, if already paid, and then direct the petitioner to deposit the rest amount. It may be mentioned here that Divorce Suit has been filed by the petitioner and is keeping the case pending for long time. The wife is deprived to contest the suit by

not complying with the order directing the petitioner to pay the amount and therefore the Court below shall see that first the maintenance and the litigation cost is paid by the petitioner and then only the Court shall proceed with the matter.

With the aforesaid observations, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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