

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.566 of 2015

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

- =====
1. Bibi Mahmuda Khatoon @ Munni Khatoon W/o Md. Akhatar Khan resident of Village Jamuniya P.S. Jharokhar District East Champaran at present residing at Village Akhata Got, P.S. Bairstaniya, District Sitamarhi.

.... Petitioner

Versus

1. The State of Bihar.
2. Md. Akhatar Khan S/o Reyajuddin Khan of Village Jamuniya P.S. Jharokhar District East Champaran at present working as a driver Basari Quarter no. 588 Rajrappa Project P.S. Rajrappa District Ramgarh, Hajariabagh (Jharkhand).

.... Respondents

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Appearance :

For the Petitioner : Mr. Mr. Uday Kumar
For the State : Mr. Nand Kumar
For O. P. No. 2 : Mr. Pushpendra Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

ORAL

Date: 17-07-2017

Heard learned Counsel for the petitioner, learned Counsel appearing on behalf of the Opposite Party No. 2 and learned Additional Public Prosecutor representing the State.

2. The petitioner is wife of Opposite Party No. 2, who is aggrieved by order, dated 15.05.2015, passed in Misc. Case No. 09 of 1999, whereby learned Principal Judge, Family Court, Sitamarhi, exercising power under Section 127 (1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), has enhanced the amount of maintenance from a sum of Rs. 300/- to Rs. 3,000/- per month, which according to the petitioner is insufficient and not commensurate with the



income of Opposite Party No. 2.

3. What is noticeable from the impugned order that the learned Court below arrived at a finding that during the year 2014-15, the total gross income from salary of the Opposite Party No. 2 was between Rs. 50,000/- to Rs. 60,000/- and his net payment for a month had been between Rs. 40,000/- to Rs. 50,000/-.

4. After having come to the said conclusion, the Court below has allowed maintenance at the rate of Rs. 3,000/- per month.

5. Learned Counsel appearing on behalf of the petitioner has submitted that what has been awarded by the Court below as monthly maintenance allowance is minuscule compared to the earning of the Opposite Party No. 2. He has submitted that a suitable amount ought to have been awarded as monthly maintenance allowance, in the background of conclusive finding that net income of the Opposite Party No. 2 is between Rs. 40,000/- to Rs. 50,000/-.

6. Learned Counsel appearing on behalf of Opposite Party No. 2, on the other hand, has submitted that since the Opposite Party No. 2 has to maintain 7 (seven) children, born of the second marriage, which he has solemnized and, therefore, it is difficult for him to part with more amount than what has been awarded.

7. Be that as it may, it is not in dispute that the



petitioner is having the status of wife of Opposite Party No. 2 even today. The monthly income of Opposite Party No. 2 has been found to be between Rs. 40,000/- to Rs. 50,000/- by the learned Court below, which finding has not been questioned. In that background, the monthly maintenance allowance, as allowed by the learned Court below, is quite low. The impugned order, therefore, requires interference. In my view, the petitioner should be held entitled for, at least, 20 per cent of the net income from salary of the Opposite Party No. 2. Accordingly, the order, dated 15.05.2015, is modified. The Court holds that the petitioner should be paid, at least, Rs. 8,000/- (20 per cent of Rs. 40,000/-) as monthly maintenance allowance. Accordingly, deduction at the rate of Rs. 8,000/- (Eight thousand) shall be required to be made by the Manager, C.C.F.L., Rajrappa, in stead of Rs. 3,000/-, as directed by the learned Court below for payment to the petitioner.

8. This application is disposed of with the modification, as above.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N/A
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