

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.196 of 2015

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1. Ram Babu Singh, Son of Bhagwat Prasad Singh, Resident of Village - Tal, P.S. - Haspura, District - Aurangabad (Bihar).

.... Petitioner

Versus

1. Sunita Devi Wife of Ram Babu Singh Resident of Village - Tal, P.O. - Sihari, P.S. - Haspura, District - Aurangabad, Presently resident of Main Road Goh, P.O. & P.S. - Goh, District - Aurangabad.

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar

For the Respondent/s :

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER**

2 09-03-2017

Heard learned Counsel for the petitioner.

The petitioner is, admittedly, the husband of the opposite party.

By order, dated 24.05.2014, passed in Misc. Case No. 36 of 2010, under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code"), learned Principal Judge, Family Court, Aurangabad, has allowed monthly maintenance allowance at the rate of Rs. 5,000/- per month in favour of the opposite party from the date of filing of the case.

Learned Counsel appearing on behalf of the petitioner, assailing the impugned order in the present criminal revision application, has, firstly, submitted that the



petitioner has alleged acts of adultery against the opposite party and, therefore, she is not entitled for any maintenance allowance by operation of Section 125 (4) of the Code. He has, secondly, submitted that the opposite party herself, without any sufficient reason, has refused to live with the petitioner and, therefore also, she is not entitled for any maintenance allowance in terms of Section 125 (4) of the Code. It has, thirdly, been submitted that compared with the income of the petitioner, the monthly maintenance allowance, which has been awarded by the learned Court below, is excessive and beyond the ability of the petitioner to pay.

As has been noticed at the very outset, the petitioner has made allegation of acts of adultery against the opposite party. He had filed a divorce application before the Court below on the ground of adultery, which has been dismissed by the Court below. Against the said order dismissing the application for dissolution of marriage, Misc. Appeal is said to be pending before this Court. The fact remains that till date, there is no finding of any act of adultery against the opposite party or that she is living in adultery.

In that view of the matter, the maintenance allowance on the said ground cannot be refused to the



opposite party.

I do not find any substance in the submission made on behalf of the petitioner that opposite party has refused to live with the petitioner without any sufficient reason.

Sufficient reason, apparently, exists in view of the allegation made by the petitioner that the opposite party is living in adultery, which stand has been turned down by a court of competent jurisdiction.

Coming to the quantum of maintenance, it has been stated that the petitioner is working as Peon/Clerk in a private education institution. The petitioner is, admittedly, young, hale and hearty, and able to work. From the impugned order, I find that the Court below has taken into account the properties held by the family of the petitioner before passing the impugned order fixing Rs. 5,000/- per month as maintenance allowance.

I do not find the said amount to be unreasonable or on the higher side, in the facts and circumstances of the case.

I do not find any merit in this application. This application is accordingly dismissed.

It goes without saying that the order, which has been passed by the learned Court below, will certainly be



subject to any order on the point of maintenance to be passed by this Court in Misc. Appeal No. 685 of 2014.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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