

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.6787 of 2017

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

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Dr. Shayan Ahmad, son of Late Dr. Salahuddin Ahmad resident of Mohalla -
Kotwachak, P.S. Town, District - Jehanabad.

.... Petitioner

Versus

1. The State of Bihar.
2. Fauzia Arshi D/o Late Zayauddin Mallik, resident of H.N. B/155, Road No.
A/11 Ali Nagar Colony, P.S. Gardanibagh, District - Patna.

.... Opposite Parties.

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Appearance :

For the Petitioner/s	:	Mr. Mukesh Kumar Singh, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the Opp. Party No.2	:	Mr. Sandeep Kumar, Advocate Mr. Sahid Salim Khan, Advocate Mr. Kaushal Kishore, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 15-09-2017

By way of the present application preferred under
Section 482 of the Code of Criminal Procedure (for short
'Cr.P.C.'), the petitioner has challenged the order dated 14.12.2016
passed by the learned Additional Principal Judge, Family Court,
Patna in Maintenance Case No. 353 (M) of 2015 whereby the
petitioner has been directed to pay a sum of Rs.15000/- per month
to opposite party no. 2 as interim maintenance.

2. This is a case of marital discord. Brief facts of the case



leading to this application are that the petitioner and the opposite party no. 2 got married on 04.09.2011 according to Muslim rites and customs. After marriage, the petitioner was taken to her matrimonial house at Jehanabad where she started to lead a happy conjugal life. Subsequently, the relationship between the parties got strained. The opposite party no. 2 filed a case under Section 498-A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act against the petitioner, vide Gardanibagh P. S. Case No. 370 of 2015, for subjecting her to cruelty for non-fulfilment of dowry.

3. In August, 2015, the opposite party no. 2 filed Maintenance Case No. 353 (M) of 2015 under Section 125 of the Cr.P.C. in the court of Principal Judge, Family Court, Patna.

4. In the maintenance case, she has claimed Rs.1,00,000/- per month as maintenance allowance and also a sum of Rs.1,00,000/- to meet the expenses of her litigation with the petitioner. She has also claimed Rs.1,00,000/- per month as interim maintenance.

5. In the said application under Section 125 of the Cr.P.C., she has pleaded that she was doing a job in CBSE Regional Office at Patna since before her marriage, but she had to leave her service under instruction of the petitioner after the



marriage. Thereafter, she became totally dependent upon him. She continued to live in her matrimonial home despite atrocities from the petitioner and his family members with an expectation that she would be accepted by her in-laws but misfortune continued in her matrimonial life. She witnessed the petitioner in an objectionable condition with a woman in his clinic at Patna to which she objected, which got the petitioner further annoyed with her.

6. She has further pleaded that she was ousted from her matrimonial house on 05.05.2014 as such she had to take shelter in her *maika* as the petitioner did not give a single penny towards her maintenance. She has pleaded that her father is predeceased and her mother has a small income from rent and she has to depend upon her brother as she has become a jobless lady and is quite unable to maintainable herself at her own.

7. She has further pleaded that her husband is a Dental Surgeon practicing since 2009 and his income from his two clinics both at Patna and Jehanabad is approximately Rs.1,50,000/- per month. Apart from that he owns Flat No. 101 in Shrazeta Complex, South Gandhi Maidan, Patna which earns monthly rent of Rs.18,000/-, one marriage hall at Jehanabad from which he earns more than Rs.50 lacs per year, landed property at Khagaul, Patna and two cars and a flat at Nausha, Patna, but despite the aforesaid



valuable property and monthly income thereof approximately Rs.5,65,000/-, he does not pay a single farthing to her towards maintenance.

8. The said application is contested by the petitioner contending that he is a young dental doctor struggling for his future for which he has opened a clinic at Patna and sometimes he also goes to Jehanabad depending upon availability of patients. He is struggling for bread and butter whereas the opposite party no. 2 thinks that he is playing in millions, which is the bone of contention and the opposite party no. 2 had deserted the petitioner.

9. Learned counsel for the petitioner submitted that the petitioner's wife is an educated and highly ambitious lady and since the petitioner is unable to bear all her expenses, she has deserted him. He submitted that the learned Principal Judge, without proper appreciation of the income of the petitioner allowed an abnormal amount of Rs.15,000/- as interim maintenance per month to the opposite party no. 2. He submitted that the petitioner is hardly earning Rs.30,000/- per month and is struggling hard for his survival on such a meager income. He has also to take care of his mother and, under such circumstance, it will be very difficult for the petitioner to pay such a huge amount to the opposite party no. 2 every month.



10. Learned counsel for opposite party no. 2, however, submitted that the provisions prescribed under Section 125 of the Cr.P.C. provide for interim maintenance pending final disposal of the application. The principle for providing maintenance is to ensure the living condition of wife similar to that of husband. He submitted that after leaving the job in order to save marriage, the wife has no independent source of income and the husband having sufficient resources and income has abandoned her to a state of penury.

11. I have heard the parties at length and have carefully perused the materials on record.

12. In a proceeding under Section 125 of the Cr.P.C., a right to claim maintenance is not dependent on who is right and who is wrong in matrimonial disputes. Once it is found that the wife is unable to maintain herself and the husband having sufficient means neglects and refuses to maintain her, a duty is cast upon the court to award maintenance. Similarly, in appropriate case, the court can award interim maintenance pending final disposal of the application. The law requires that the court must take into consideration the status of parties and the capacity of the husband to pay maintenance.

13. In the present case, at the time of claiming interim



maintenance, the opposite party no. 2 had no income for supporting herself whereas the admitted case of the petitioner is that he is a dental surgeon having clinics at Patna and Jehanabad. In the given circumstances, the Court is of the opinion that the interim maintenance allowance of Rs.15,000/- ordered by the learned Additional Principal Judge appears to be justified.

14. In that view of the matter, I see no reason to interfere with the order impugned. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.09.2017
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