

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No. 1118 of 2012

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Rajeev Kumar Sinha, Son of Late Hari Narayan Pd. Sinha, resident of Village-Bhagatpur, P.O. & P.S.-Balua, District-Begusarai, at present resides at house of Anil Kumar Sinha (in front of Vijay Lala), Ward No. 9, Mohalla Khata Jangi, Bagmali, P.S.-Sadar, District-Vaishali at Hazipur.

.... Petitioner

Versus

1. The State of Bihar.
2. Anu Bala Kumari, Wife of Rajeev Kumar Sinha, D/o Sri Sachida Nand Prasad, resident of Mohalla-Hathsarganj, P.S.-Town (Sadar), District-Vaishali at Hazipur. At present resides at house of Anil Kumar Sinha (in front of Vijay Lala), Ward No. 9, Mohalla Khata Jangi, Bagmali, P.S.-Sadar, District-Vaishali at Hazipur.
3. Anshi (minor), D/o of Rajeev Kumar Sinha, under the guardianship of Rajeev Kumar Sinha, at present resides at house of Anil Kumar Sinha (in front of Vijay Lala), Ward No. 9, Mohalla Khata Jangi, Bagmali, P.S.-Sadar, District-Vaishali at Hazipur.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Aditya Narain Singh, Adv.
: Mr. Kundan Kumar Sinha, Adv.

For the Opposite Parties : Mrs. Sharda Kumari, APP
: Mr. Devendra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER



Date: 01-05-2017

The petitioner is working as Lower Division Clerk in the office of Deputy Director, Consolidation, Siwan (Govt. of Bihar).

2. Opposite party No. 2 is his legally wedded wife and opposite party No. 3 is their minor daughter.

3. The present criminal revision application has been filed under Section 19(4) of the Family Court's Act. The petitioner is aggrieved by an order, dated 12/07/2012, passed by the learned Principal Judge, Family Court, Vaishali at Hajipur, whereby, invoking the provision of Section 125 of the Code of Criminal Procedure, 1973 (*in short Cr.P.C.*), he has been directed for payment of monthly maintenance allowance at the rate of Rs. 5,000/- for opposite party No. 2 and Rs. 3,000/- for opposite party No. 3. Thus, the petitioner has been made to pay a total sum of Rs. 8,000/- for maintenance of opposite party No. 2, his wife, and opposite party No. 3, their minor daughter.

4. I have heard, at length, learned counsel, appearing on behalf of the petitioner, learned counsel representing opposite party Nos. 2 & 3 as well as learned Additional Public Prosecutor for the State.

5. At the time of issuance of notice, by an order, dated 19/06/2014, as an interim measure, the Court



had directed the petitioner to pay maintenance amount at the rate of Rs. 3,000/- per month to opposite party No. 2 and Rs. 2,000/- per month to opposite party No. 3 from the date of the impugned order, dated 12/07/2012.

6. Assailing the impugned order, Mr. Aditya Narain Singh, learned counsel, appearing on behalf of the petitioner, has submitted that the petitioner is inclined and will to live with opposite party No. 2 and opposite party No. 3, but they have refused to live with the petitioner. He has, therefore, submitted that in view of sub-Section 4 of Section 125 of the Cr.P.C., opposite party Nos. 2 and 3 are not entitled for any maintenance . He has secondly submitted that the amount of monthly maintenance allowance at the rate of Rs. 8,000/- per month, fixed by the court below, is excessive, if the same is compared with the petitioner's monthly salary. He has also submitted that petitioner's appointment in government service is on compassionate ground and by virtue of conditions of his compassionate appointment, he is under legal obligation to maintain his mother and his unemployed younger brother and his younger brother's family. He has submitted that even as per the case of the opposite parties, monthly salary of the petitioner was found to be Rs. 20,000/- and in the absence of any proof of any additional source of income of the petitioner, the court



below ought not to have directed the petitioner to pay a sum of Rs. 8,000/- per month to opposite parties, for maintenance.

7. Learned counsel, appearing on behalf of opposite party Nos. 2 and 3, has submitted that whereas on the one hand, the petitioner is expressed his willingness to keep the opposite parties, so that they may live together, on the other hand, he has filed an application before the court below seeking dissolution of marriage. He has submitted that the court below, upon considering the evidence, adduced in the proceeding under Section 125 of the Cr.P.C., refused to accept the plea of the petitioner that opposite party No. 2 was willfully and without having any cause had refused to live with the petitioner. He has submitted that because of harassment and torture, meted out to the petitioner at the matrimonial house, she has been forced to live away from the association of the petitioner. He has also submitted that the petitioner is taking a wrong plea that he has to maintain his mother and younger brother also, his appointment being compassionate in nature, since the mother of the petitioner herself is getting substantial amount as family pension, which is sufficient to maintain her.

8. I have perused the impugned order, dated 12/07/2012, and other materials available on the record. In



my view, this is not a fit case for denial of maintenance under Section 125 of the Cr.P.C., on the ground that opposite party No. 2, without any valid reason, has refused to live with the petitioner. Matrimonial discord between the petitioner and opposite party No. 2 is pellucid. Learned counsel for the petitioner has not disputed the fact that the petitioner has filed an application seeking dissolution of marriage. In that view of the matter, the plea that the opposite party No. 2 has refused to live with the petitioner without sufficient and valid reason, cannot be accepted.

9. The only question, which is now left to be decided in the present case, in that background, is whether the amount of maintenance at the rate of Rs. 8,000/- per month, fixed by the court below by the impugned order, dated 12/07/2012, is reasonable or not or it deserves to be altered or modified.

10. To address precisely the said issue, the Court had asked the petitioner to file an affidavit, showing his monthly income from salary and other allowances. A supplementary affidavit has, accordingly, been filed along with the letter, dated 06/03/2017, issued by the Additional Collector-cum-Deputy Director, Consolidation, Siwan, addressed to the petitioner, which has been brought on record by way of Annexure-4 to the supplementary affidavit.



The said letter, dated 06/03/2017, relates to issuance of pay-slip for the month of February, 2017 from which it appears that for the said month of February, 2017, after making statutory deductions, the net amount payable to the petitioner has been disclosed as Rs. 21,190/-.

11. Since the opposite parties have not been able to establish that the petitioner has any source of income other than salary, which he receives from his employment in government service, I am of the view that a fixed part of the salary, which the petitioner receives/has been receiving/would be receiving should be settled, which will be payable to the opposite parties for their monthly maintenance. The liability of the petitioner to look after the family, since his appointment is on compassionate ground, cannot be overlooked and undermined. At the same time, his responsibility for maintaining his wife and the minor child is paramount.

12. Considering all these aspects, I am of the view that 30% of the salary/emoluments, which the petitioner receives, after statutory deductions, should be paid to opposite party No. 2 for her maintenance and for the maintenance of opposite party No. 3, since, admittedly, opposite party No. 3, the minor daughter, is living with opposite party No. 2.



13. The impugned order, dated 12/07/2012, passed by the learned Principal Judge, Family Court, Vaishali at Hajipur, is, accordingly, modified and opposite party Nos. 2 and 3 are held entitled for 30% of the salary/emoluments, which the petitioner receives, after statutory deductions, from the date of order of the court below, i.e., 12/07/2012.

14. The arrears of maintenance allowance, arising out of the present order, will be required to be calculated accordingly and paid to opposite party No. 2 in her account by the petitioner in twenty four (24) monthly installments, beginning from 2nd week of May, 2017.

15. It is directed that it will be the responsibility of the Drawing and Disbursing Officer of the petitioner to ensure that the payment of 30% of the petitioner's salary is ensured and deposited directly in the account of opposite party No. 2 by the Drawing and Disbursing Officer. The opposite party No. 2 will be required to furnish to the Deputy Director, Consolidation, Siwan, her bank account number along with a copy of this order, for its strict compliance.

16. To allay any doubt or confusion, it is also made clear that the monthly maintenance amount shall be calculated at the rate of 30% of net payable amount of the petitioner, after statutory deductions, on month to month



basis. For example, for the month of February, 2017, the net payable amount of the petitioner was Rs. 21,190/-. Similarly, based on the amount, which the petitioner was/would be entitled to receive as net salary, shall be the basis for calculating the monthly maintenance allowance payable, in terms of the present order.

17. If the petitioner fails to pay the arrears in the account of opposite party No. 2, as directed above, for two months from the 2nd week of May, 2017, and if the petitioner brings this fact to the notice of the Deputy Collector, Consolidation, Siwan, the Deputy Collector, Consolidation, Siwan, shall be required to calculate the arrears in terms of the present order, as indicated above, and ensure that the said arrears are deposited from the petitioner's salary in the account of opposite party No. 2 in twenty four (24) monthly installments.

18. This application stands disposed of accordingly.

(Chakradhari Sharan Singh, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09/05/2017
Transmission Date	09/05/2017

