

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.86 of 2015

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1. Meera Devi wife of Sri Vijay Kumar Choudhary, daughter of Sri Ram Krishna Choudhary
2. Smirity Sagar, daughter of Sri Vijay Kumar Choudhary and Meera Devi
3. Sweta Sagar, daughter of Sri Vijay Kumar Choudhary and Meera Devi
4. Bhumi Sagar, daughter of Sri Vijay Kumar Choudhary and Meera Devi
5. Abhinandan Sagar son of Sri Vijay Kumar Choudhary and Meera Devi
All resident of mohalla-Deep Nagar, Gulzarbagh.... Petitioner/s

Versus

1. State of Bihar
2. Vijay Kumar Choudhary son of Late Vishwant Choudhary, resident of Mohalla- Deep Nagar, Gulzarbagh, Road No.5 P. S. Mehndiganj, District Patna at Present residing at Samatiya Gali, Gauri Das Ki Mandi, P. S. Malsalam, District-Patna Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kumar Malendu

For the Respondent/s : Mr. Pranav Kumar(App)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

3 18-07-2017 Heard learned counsel for the parties.

2. Petitioner No.1 and Opposite party No.2 are wife and husband respectively. Petitioner Nos. 2 to 4 are their daughters and Petitioner No. 5 is their son.

3. They have assailed an order, dated 26.11.2014, passed by the learned Additional Principal Judge, Family Court, Patna, in Maintenance case No. 36(M) of 2010, whereby an amount of Rs. 11,000/- has been allowed as maintenance allowance in exercise of power under Section 125 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as the Code*), from the date of the order.



4. The grievance of the petitioners is that they had claimed maintenance allowance at the rate of 17,000/- per month as against which only 11,000/- has been allowed by the Court below. Their further grievance is that the maintenance amount ought to have been awarded from the date of filing of the application and not from the date of order.

5. Learned counsel appearing on behalf of the petitioners has submitted that their application for maintenance remained pending for nearly four years without there being any fraud on the part of the petitioners and, therefore, the maintenance allowance ought to have been awarded with effect from the date of the application.

6. What I find from the impugned order is that the Court found petitioner No.5 to be major and, therefore, he has been held to be not entitled for maintenance. As regards petitioner No.3, the Court below has held that she being already in employment, she too was not entitled for maintenance allowance. Considering the income of Opposite party No.2 which he earns from salary as an Upper Division Clerk in Animal Husbandry Department, Secretariat at Patna of Rs. 35,220/- per months, the Court below has allowed Rs. 7,000/- per month for petitioner No.1 and Rs. 2,000/- for two daughters, i.e., petitioner No.2 and petitioner No.4.



7. What I find from the impugned order is that the petitioners were allowed maintenance at the rate of Rs. 7,000/- per month under certain orders of this Court, whereby the Opposite party NO.2 was allowed bail in a criminal case registered at the instance of petitioner No.1 for the offence punishable under Sections 498A and other Sections of the Indian Penal Code. Since the petitioners were getting sum allowance prior to the date during the pendency of application for maintenance, I do not find any illegality in the impugned order to the extent maintenance allowance has been directed to be paid from the date of the order. The Court below has found the income of Opposite party No.2 to be Rs. 35,220/- per month including house rent as salary. It is also apparent from the impugned order, which fact is not being disputed that the petitioners are living in the house of Opposite party No.2.

8. Taking into account a holistic view of the matter, the determination of the maintenance allowance at the rate of Rs. 11,000/- per month cannot be said to be unreasonable. I have kept in mind the fact that the income of Opposite party No.2 was being assessed by the Court below as on the date of the order and not on the date of filing of the application.

9. It has been submitted on behalf of the petitioners that



the amount, which has been awarded by the Court below is not being paid to them by the Opposite party No.2 on regular basis and, therefore, he submits that the Departmental head may be directed to ensure payment of such amount in the account of petitioner No.1 for making deductions from the salary of Opposite party No.2, who is working as Upper Division Clerk in Animal Husbandry Department.

10. Considering the above, I dispose of the application, without interfering with the impugned order with an observation that if the petitioner No.1 files a representation before the head of the Department, where the Opposite party No.2 is working, by furnishing details of her account, the head of the Department shall ensure that the amount as directed by the Court below is deducted from the salary of Opposite party No.2 for being deposited in the account of petitioner No.1, every month.

11. I further observe that the petitioners shall be at liberty for enhancement of amount of maintenance in change circumstance, in accordance with the provision of Section 127 of the Code.

12. This disposes of the application.

(Chakradhari Sharan Singh, J)

ArunKumar/-

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