

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.329 of 2016

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Aradhana Kumari Wife of Sri Pawan Kumar, resident of village-Khuthadih, Police Station-Barahiya in the district of Lakhisarai, presently residing in village-Mokama Ghat, police station-Mokama in the district of Patna.

.... Petitioner.

Versus

1. The State of Bihar through the District Magistrate, Lakhisarai.
2. Pawan Kumar, Son of Late Arjun Mandal, resident of village-Khuthadih, Police Station-Barahiya in the district of Lakhisarai.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 21204 of 2014

IN

CR. REV. 989 of 2013

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Pawan Kumar @ Pavan Kumar, Son of Late Arjun Mandal, resident of village-Khuthadih, Police Station-Barahiya, District-Lakhisarai.

.... Petitioner

Versus

1. Aradhna Kumari , Wife of Pawan Kumar, daughter of Sri Shyamdeo Prasad, resident of village-Mokama, Ghat, P.O.+P.S.-Mokama, District-Patna.
2. Shyamdeo Prasad, Son of Shiv Nath Mahto, Resident of Village- Mokama, Ghat, P.O.+P.S.-Mokama, District-Patna.
3. Ranjan Kumar Son of Kartik Mandal, Resident of Village-Ramchandrapur, P.S.-Piparia, District-Lakhisarai.

.... Respondents

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Appearance :

(In C.Misc. No. 329 of 2016)

For the Appellant/s : Mr. Prabhu Narayan Sharma

For the Respondent/s : Mr. MADHUKAR KRISHNA SINHA- SC1

(In CWJC No. 21204 of 2014)

For the Petitioner/s : Mr. Narsingh Tanti

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 16-05-2017

Heard the learned counsel for the parties appearing
in both the applications.

Both the applications have been filed under Article



227 of the Constitution of India against the respective orders passed in T.S. (Mat.) Case No.18/2012. By earlier order dated 23.03.2017 in C.Misc.No.329/2016, both the applications have been directed to be heard together.

The parties to the proceeding are husband and wife. The T.S. (Mat.) Case No.18/2012 has been filed by the husband-petitioner in CWJC No.21204/2014 seeking a decree of divorce. On the petition under Section 24 of the Hindu Marriage Act filed by the wife, the learned court below by order dated 27.07.2013 has directed the husband to pay Rs.9,000/- per month for maintenance and Rs.1,000/- per month for expenses of the litigation. The husband-petitioner has filed CWJC No. 21204/2014 questioning the legal sustainability of the said order.

As the aforesaid amount as directed by order dated 27.07.2013 was not paid by the husband, the wife approached the court below by filing petitions in that regard for direction for payment of the said amount. The C.Misc.No.329/2016 has been filed by the wife as petitioner against the order dated 20.02.2016 whereby the learned court below has dismissed the petition dated 06.01.2016 filed by the wife with direction to file petition for realization of the due amount after disposal of the Cr.Revision No.989/2013. It would be relevant to notice here that the Cr.Revision No.989/2013 has



thereafter been converted to CWJC No.21204/2014.

The learned counsel for the husband-petitioner in CWJC No.21204/2014 has submitted that the impugned order dated 27.07.2013 for payment of total Rs.10,000/- per month to the wife respondent is not sustainable in law; firstly because the amount has been fixed by the learned court below arbitrarily on higher side and secondly because in the facts and circumstances of the case such an order was not legally justified .Elaborating the submissions, it has been contended that the petitioner –husband has always been ready to keep the wife-respondent with him as his wife but due to malafide and harassing intention wife-respondent has not agreed to the said proposal. It has also been argued that the petitioner-husband is ready for one time settlement, which fact has been ignored by the learned court below. It has also been submitted that the amount of Rs.5,000/- per month is being paid by the husband-petitioner to the wife-respondent in pursuance to the order dated 12.12.2013 passed by this Court in Cr.Misc.No. 35137/2013 (Annexure-2) while granting anticipatory bail to the husband-petitioner in criminal case filed by the wife-petitioner under Section 498A IPC and Section 3/4 of Dowry Prohibition Act. It has also been argued that the husband petitioner has to maintain and meet the expenses of his ailing mother and family members and therefore the direction for payment of amount of



Rs.10,000/- per month in addition to Rs.5,000/- per month to be paid to the wife respondents will be very difficult to comply . During the course of submission, learned counsel for the husband-petitioner however has accepted that no amount has been paid upto now in compliance of the order dated 27.07.2013 under Section 24 of the Hindu Succession Act.

While resisting the prayer of the husband-petitioner and controverting the submissions on his behalf, learned counsel for the wife-respondent has submitted that there is no legal infirmity in the order dated 27.07.2013 passed by the learned court below allowing the prayer of the wife-respondent under Section 24 of the Hindu Marriage Act. It has been submitted that the wife respondent has no means to support her and she is leading a life of destitution having been compelled to live with parents. It has been canvassed that at the time when the order dated 27.07.2013 was passed, the husband-petitioner, who is a C.R.P.F Personnel, was getting gross salary of Rs.32751/- and by referring to the annexures to the supplementary affidavit filed in C.Misc. No.329/2016, it has been submitted that at present the gross pay of husband petitioner is Rs.44106/- as per his pay slip for the month of April 2017 (Annexure-11) . It has also been argued that it is the husband-petitioner who has deserted the wife-respondent and has also turned down all the efforts for conciliation as



noticed by the learned court below in the order dated 27.07.2013. It has also been propounded that this Court must not invoke its extraordinary jurisdiction on the prayer of the husband-petitioner who has flagrantly violated the direction of the learned court below for payment of the interim maintenance amount as made in the order dated 27.07.2013. It has been pointed out that the husband-petitioner has solemnized second marriage and has also been blessed with a daughter in the year 2014 which fact has been stated in detail in paragraph-3 of the supplementary affidavit filed in C.Misc.No. 329/2016. It has been emphatically argued that the entire plea of hardship raised on behalf of the husband-petitioner is an eye wash only and he does not deserve sympathy of this Court. It has also been submitted that the learned court below has wrongly turned down the prayer of the wife- respondent for realization of the amount of interim maintenance as directed by the order dated 27.07.2013 and the order dated 20.02.2016 impugned in C.Misc.No.329/2016 filed by the wife as petitioner is fit to be quashed with appropriate direction to the husband-petitioner for payment of the amount of due maintenance as directed.

After considering the rival submissions on behalf of the parties in both the applications and the perusal of the respective impugned orders therein, it is manifest that the husband has filed the



matrimonial case seeking divorce against the wife and the learned court below has passed the order for payment of Rs.9,000/- by way of interim maintenance to the wife and further Rs.1,000/- per month by way of litigation cost. Before passing the said order on 27.07.2013 the learned court below has taken into consideration that the wife was ready to live with the husband on any condition but it was the husband who had turned down the effort of compromise in that regard and had also evaded his appearance in court on one pretext or another. It has also been found that the wife has no source of income to support her and has been depending upon her parents for her sustenance. The learned court below has also recorded that all the efforts for reconciliation by the court stood frustrated due to malafide intention of the husband.

This Court in the case of ***Sri Sunil Chandra Singh Vs.Smt.Seema Singh, 2017 (1)PLJR 700***, while considering the ambit and scope of Section 24 of the Hindu Marriage Act has held as follows:

15. “....As observed by the apex court, though in the context of Section 125 Cr.P.C., in ***Shail Kumari Devi Vs.Krishna Bhagwan Pathak, AIR 2008 SCC 3006***, that “ maintenance is a right which accrues to a



wife against her husband the minute the former gets married to the later. It is not only a moral obligation but is also a legal duty cast upon the husband to maintain his wife". The purpose of maintenance therefore is definitely to prevent vagrancy and provide financial support in appropriate cases to the wife. By the provision enshrined in Section 24 of the Hindu Marriage Act, the amplest discretion has been conferred on the court in a matrimonial proceeding to pass appropriate order in this regard..."

Recently the apex court in **Civil Appeal No. 4615/2017 (Manish Jain Vs.Akanksha Jain)** decided on **March 30, 2017**, in almost similar facts and circumstances, has ruled as follows:

11. "....The Court exercises a wide discretion in the matter of granting alimony pendente lite but the discretion is judicial and neither arbitrary nor capricious. It is to be guided, on sound principles of matrimonial law and to be exercised within the ambit of the provisions of the Act and having regard to the object of the



Act. The Court would not be in a position to judge the merits of the rival contentions of the parties when deciding an application for interim alimony and would not allow its discretion to be fettered by the nature of the allegations made by them and would not examine the merits of the case. Section 24 of the HM Act lays down that in arriving at the quantum of interim maintenance to be paid by one spouse to another, the Court must have regard to the appellant's own income and the income of the respondent...."

14. *"...Section 24 of HM Act empowers the Court in any proceeding under the Act, if it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of any one of them order the other party to pay to the petitioner the expenses of the proceeding and monthly maintenance as may seem to be*



reasonable during the proceeding, having regard also to the income of both the applicant and the respondent. Heading of Section 24 of the Act is “Maintenance pendente lite and expenses of proceedings”. The Section, however, does not use the word “maintenance”; but the word “support” can be interpreted to mean as Section 24 is intended to provide for maintenance pendente lite.

Considering the facts and circumstances of the present case, on the anvil of the dictums as above mentioned, it is evident that the husband petitioner of T.S. (Mat.) Case No.18/2012 is employed in Central Reserve Police Force and has regular source of income. Though the husband-petitioner has claimed that his income is only Rs.16220/- per month but the learned court below has recorded the finding of fact on the basis of evidence that the gross pay of the husband-petitioner is Rs.32751/- and after deduction the net payable amount is Rs.22312/-.The wife-petitioner in C.Misc.No.329/2016 in the supplementary affidavit has brought on record the pay slips (Annexure-8,9,10 and 11), which demonstrate that the gross pay of the husband-petitioner is Rs. 44106/ and net pay



amount is Rs.37003/- for the month of April 2017. To the contrary, there is no material brought on record to show that the wife-respondent has got any independent source of income sufficient for her support. The learned court below has also recorded the said finding. In this backdrop, the conclusion is inevitable that the husband-petitioner who has filed matrimonial case seeking divorce is legally liable under Section 24 of the Hindu Marriage Act to pay to the wife the expenses of the proceeding and also the sum determined by the court for her maintenance pendente lite. The learned court below has fixed a sum of Rs.9,000/- per month as the amount to be paid by the husband to the wife by way of maintenance pendente lite and Rs.1,000/- per month as the amount for meeting the expenses of the proceeding by her.

The fact is however glaring that the husband-petitioner has not paid any amount in this regard upto now as directed by the order dated 27.07.2013. The learned counsel appearing for the husband petitioner has submitted that no amount as directed by order dated 27.07.2013 has been paid up-to-now because the said order has been challenged before this Court in CWJC No.21204/2014. It has also been submitted that the husband-petitioner is paying Rs.5,000/- to the wife in pursuance to the direction passed by this Court in Cr.Misc.No.35137/2013 while granting the anticipatory bail. It would



be fruitful here to notice that in the order dated 12.12.2013 (Annexure-2 to the application of C.Misc.No.329/2016) passed in Cr.Misc.No.35137/2013 this Court has taken into notice the fact of direction for payment of Rs.10,000/- per month to the husband-petitioner and thereafter has accepted the undertaking on behalf of the husband-petitioner for payment of Rs.5,000/- to his wife before granting the anticipatory bail as prayed by the husband-petitioner. The non-payment of any amount by the husband petitioner as directed under Section 24 of the Hindu Marriage Act was also taken into notice by this Court in Cr.Misc.No.37268/2015 heard together with Cr.Misc.No.47580/2014 whereby order dated 01.10.2015 (Annexure-1 to the application of C.Misc.No.329/2016), this Court has directed as follows:

“... In case the Principal Judge, Family Court, Lakhisarai finds that the husband is not complying with the order in regard to payment of maintenance to his wife, he shall communicate this fact to the Magistrate concerned so that he can initiate a proceeding for cancellation of his bail on such ground ...”

The consequence of non-payment of amount by the husband to the wife as directed under Section 24 of the Hindu



Marriage Act has been considered by this Court in ***Priyanka Devi Vs Kaushal Kishore Gautam, 2017 (1) BBCJ 76*** and it has been held as follows:

9. “...*The divorce suit is proceeding. Since the wife had no source of income for her maintenance and to defend her in the divorce suit, the Court directed the husband to provide the cost of maintenance and litigation. If the cost of maintenance and the litigation cost is not paid by the husband then the wife will be defenceless. In other words, she will be unable to defend the case filed by the husband and the case will be ex parte against her.*

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If the amount is not made available then the very object and purpose of this provision shall be defeated. Wife cannot be directed in all cases to proceed for execution for recovery of the amount which will take much time and thereby



again it will delay the disposal of the case. Law is not so powerless to bring the husband to book. If the husband has failed to make the payment, as directed by the Court, his defence/case can be struck out. The person who is disobeying the order of the Court cannot be allowed to be heard on merit considering his conduct. After all he is approaching the Court for justice as claimed by him but at the same time, the Court has to administer justice to both the parties. If the husband is not obeying the order of the Court then why the Court should oblige and proceed to hear his case....”

(emphasis supplied)

This Court, further, in **Priyanka Devi** (Supra) stayed the further proceeding of the matrimonial case till the arrears amount of maintenance and litigation cost was deposited/ paid by the husband to the wife within the reasonable time and also directed the learned court below to fix the said reasonable time and to dismiss the divorce case if the arrears and the current amount of maintenance and litigation cost was not deposited or paid.

As the impugned order further shows that after



considering the other facts and circumstances as well, the learned court below has also come to the conclusion that the husband has the malafide intention to evade payment of the amount of maintenance and litigation cost to the wife as directed. The learned court below in particular has also taken into notice the fact that during the course of hearing of the petition filed by the wife under Section 24 of the Hindu Marriage Act, the mother of the husband had filed a maintenance case on 11.07.2013, apparently to support the pleas raised by her son (husband).

The findings of facts by the learned court below coupled with non-compliance of the direction dated 27.07.2013 by the court for nearly four years do not enthruse this Court to invoke its jurisdiction under Article 227 of the Constitution of India for interdicting the order dated 27.07.2013 directing for payment of maintenance and litigation cost by the husband-petitioner to the wife-respondent in T.S. (Mat.) Case No.18/2012. Further the allegation of solemnizing second marriage by the husband, as mentioned in detail in paragraph 3 of the supplementary affidavit by the wife, though still to be judicially determined in view of the submission by the learned counsel of the husband-petitioner denying the same, has also its adverse reflection on the issue of non-compliance of the direction by the court below.



In the ultimate eventuate, the CWJC No.21204/2014 filed by the husband-petitioner is dismissed. The C.Misc.No.329/2016 filed by the wife-respondent is allowed and the impugned order dated 20.02.2016 is quashed. It is directed that the proceeding of Title (Mat.) No. 18/2012 pending before the court of Principal Judge, Family Court, Lakhisarai shall remain stayed till the amount of maintenance and litigation cost in arrears up-to-date as well as current amount, is deposited/paid by the husband to the wife within a reasonable time. The learned court below shall fix such reasonable time and if within that reasonable time the arrears and current amount of maintenance and litigation cost as directed by the order dated 27.07.2013 is not deposited or paid, the learned court below shall dismiss the T.S. (Mat.) Case No.18/2012 for disobedience of its order.

(V. Nath, J)

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