

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38120 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- EASTCHAMPARAN
(MOTIHARI)

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Sunil Kumar Shrivastava, Son of Sri Akhileshwar Prasad Shrivastava, Resident of
Mohalla Belbanwa (Motihari), P.S. Town Motihari, District East Champaran

.... Petitioner

Versus

1. The State of Bihar
2. Smt. Smita Shrivastava, Daughter of Late Ramendra Mohan Sahay, C/o
Saurabh Kumar, Resident of Mohalla Gobarsahi Bhagwanpur, in front of
Praphat Tara School Muzaffarpur, P.S. Bhagwanpur, District Muzaffarpur

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Anil Kumar, Advocate
For the State : Mr. Lallan Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 09-10-2017

Heard learned counsel for the petitioner as well as learned
counsel for the State. None appears on behalf of opposite party no.2.

2. The petitioner seeks quashing of interim order dated
27.09.2013, passed in Maintenance Case No.219 of 2012 by learned
Principal Judge, Family Court, Muzaffarpur whereby he has directed
the petitioner to pay Rs.8000/- per month as interim maintenance to
his wife and her minor son from 30.07.2013.

3. Learned counsel for the petitioner submits that it is the
wife who left the matrimonial home without any reason, so she is not
entitled for maintenance. Moreover, the petitioner-husband is a Civil
Engineer though earlier employed in a private company but at the
time of passing of the impugned order he was unemployed. Learned



counsel for the petitioner refers to sub-clause (4) of Section 125 Cr.P.C. and submits that if the wife without any sufficient reason does not live with the husband, she is not entitled for maintenance.

4. Having considered the rival submissions and on perusal of the records, the Court finds that the impugned order is an interim maintenance order passed under Section 125 Cr.P.C. The application filed by the wife under Section 125 Cr.P.C. *prima facie* discloses the fact of neglect by the petitioner, so whether the husband is neglecting or the wife is not living with her husband without any sufficient reason is a matter of proof, which can only be decided by the trial court on production of evidence by both sides. Objective of introduction of Section 125 Cr.P.C. is to provide relief to such wife, children, legitimate or illegitimate minor child or even a major one having physical or mental abnormality and parents, who are not able to maintain themselves in such case a person having sufficient means neglects to refuse to maintain his wife, children and parents as referred above on proof of such neglect or refusal to maintain, the court orders to make monthly allowance for the maintenance. However, there is provision for passing interim maintenance order under Section 125 Cr.P.C. as well as expenses for proceeding during the pendency of the proceeding. Considering the urgency of the maintenance as it is necessary to maintain ones life and limb



preferably the interim order is to be passed within 60 days from the date of the service of the notice to other side. In the present case this is an admitted position that the petitioner-husband is the Civil Engineer and was employed earlier in a private road construction company engaged in construction of four lane but the submission is that now at present he is jobless but there is no documentary evidence to show that he is not in service in the earlier firm, no such document has been produced. There is specific provision under Section 127 Cr.P.C. that on proof of change in the circumstances of any person directed to pay interim maintenance can file an application under that provision and on proof of a change of such circumstance, the court may pass an appropriate order but no such recourse has been taken by the petitioner, so finding no merit, the quashing application stands dismissed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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