

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.60 of 2017

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

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Rishikesh Pal, son of Sri Basudeo Mandal, resident of Moha,,a – Yadav Tola,
Madhubani, Police Station – K. Hat, District Purnea

.... Petitioner

Versus

1. The State of Bihar
2. Smt. Priyanka Anand, wife of Rishikesh Pal, daughter of Parimal Kumar Saha,
resident of Mohalla – Line Bazaar, Purnea, near A. K. Dey Campus, Police
Station - K. Hat, District Purnea

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Vindhyachal Singh Mr. Bijendra Kumar Singh
For the State	:	Ms. Asha Devi
For O. P. No. 2	:	Mr. M. N. Parbat, Sr. Adv Mr. Ashok Kumar Roy Mr. Ved Prakash Srivastava Mr. Praveen Prabhakar

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
ORAL

Date: 25-04-2017

I. A. No. 69 of 2017

I.A. No. 69 of 2017 has been filed by the petitioner, under Section 5 of the Limitation Act, seeking condonation of delay in preferring the present criminal revision application against the order, dated 12.07.2016, passed by the learned Principal Judge, Family Court, Purnea, in Maintenance Case No. 03 of 2013.

2. Having considered the reasons assigned in the present petition seeking condonation of delay and having



heard the learned counsel for the parties, this Court is satisfied that the petitioner was prevented by sufficient causes from preferring the application within time.

3. In view of the above, the delay, in preferring the criminal revision application, is hereby condoned.

4. I.A. No. 69 of 2017 stands disposed of accordingly.

CRIMINAL REVISION NO. 60 OF 2017

5. Heard learned Counsel for the parties concerned.

6. The petitioner is the husband of Opposite Party No. 2. He is aggrieved by an order, dated 12.07.2016, passed, by learned Principal Judge, Family Court, Purnea, in Maintenance Case No. 03 of 2013, under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), whereby he has been directed to pay to Opposite Party No. 2 monthly maintenance allowance at the rate of Rs. 20,000/- (twenty thousand) from the date of filing of the case. So far as the amount of maintenance from the date of filing till the date of the passing of the impugned order, is concerned, the learned Court below has directed the petitioner to pay the amount within a period of six months.

7. There are two basic facts, which are not in



dispute. The Opposite Party No. 2 is legally married wife of the petitioner. Secondly, the petitioner accepted, in his deposition, that the monthly salary received by him while working in Singapore, is equivalent to Rs. 1,90,000/- to Rs. 2,00,000/-. The witnesses before the learned Court below also deposed that the petitioner's family is having two houses at Purnea. After having deposed before the learned Court below, the petitioner had filed an application, on 07.05.2016, that he was no more in employment and his employment in Singapore stood terminated.

8. Mr. Vindhyachal Singh, learned Counsel, appearing on behalf of the petitioner, has made, broadly, four submissions to assail the impugned order. He has, firstly, submitted that Opposite Party No. 2 is a qualified lady, with M.B.A. degree and it cannot be said that she is not able to maintain herself. He has, secondly, submitted that the learned Court below has wrongly assessed the income of the petitioner as Rs. 1,90,000/- to Rs. 2,00,000/-, by using conversion of currency method. He submits that the learned Court below failed to appreciate that Singapore is a very expensive place and from the salary, which the petitioner earned there as Software Engineer, nothing could be saved at all. He has, thirdly, submitted that the learned Court below ought to have considered the petitioner's application, filed on 07.05.2016,



whereby he had submitted before the learned Court below that he had to leave the job of Singapore Software Company. He has, fourthly, submitted that the Opposite Party No. 2 herself refused to live with the petitioner without any sufficient reason and for that reason also, she is not entitled for any maintenance allowance, under Section 125 of the Code.

9. Mr. M. N. Parbat, learned Senior Counsel, appearing on behalf of the Opposite Party No. 2, *per contra*, submits that there was no evidence adduced before the learned Court below to the effect that the petitioner had left the job at Singapore. He has further submitted that no evidence was adduced before the learned Court below that the Opposite Party No. 2 was earning and was able to maintain herself. The witnesses, on behalf of Opposite Party No. 2, deposed before the learned Court below that she was preparing for competitive examination, he has contended.

10. What is evident from the facts, as discussed above, that as on the date of making of the application, the petitioner was working as Software Engineer, in Singapore, earning the salary, as noted above.

11. It has been pointed out by Mr. Singh that while granting regular bail to the petitioner, this Court, by an order, dated 06.08.2013, passed in Criminal Misc. No. 15187 of 2013, had asked the petitioner to pay a sum of Rs. 2,000/-



per month to the informant from September, 2013. In that view of the matter, the learned Court below ought not to have directed payment of monthly maintenance amount from the date of filing of the application.

12. So far as the quantum of monthly maintenance amount at the rate of Rs. 20,000/- per month is concerned, I do not find the fixation made by the learned Court below to be unreasonable, keeping in mind the admitted fact with respect to monthly salary of the petitioner.

13. The date of making of the application by Opposite Party No. 2 before the learned Court below is not evident from the materials on record. However, so far as the order passed by the learned Court below for payment of maintenance allowance from the date of making of application, I find, from the order of this Court, dated 06.08.2013, that the petitioner was in custody in connection with the criminal case lodged by Opposite Party No. 2 since 19.02.2013. Apparently, from, at least 19.02.2013, till passing of the order, dated 06.08.2013, the petitioner was in custody.

14. In that view of the matter, I am of the opinion that from the month of February, 2013, till his release on bail and for a period of six months thereafter, the petitioner should not be made to pay monthly maintenance allowance, under Section 125 of the Code.



15. The petitioner had agreed to pay a sum of Rs. 2,000/- per month by way of maintenance while seeking regular bail in Criminal Misc. No. 15187 of 2013. Whatever amount has been paid by the petitioner, in the light of the order of this Court, dated 06.08.2013, shall have to be adjusted and the maintenance allowance directed by the learned Court below shall be required to be paid by the petitioner accordingly.

16. I do not find much substance in the submission made on behalf of the petitioner that the petitioner had filed application, under Section 127 of the Code, before the learned Court below, with a plea that he had lost his job in Singapore. The application, so filed by him, cannot be treated to be an application under Section 127 of the Code. The language of Section 127 of the Code is clear and it states that on proof of a change in the circumstances of any person, receiving, under section 125 of the Code, monthly allowance for maintenance to his wife, the Magistrate may make such alteration.

17. Admittedly, till the date of passing of the order by the learned Court below, no final order, under Section 125 of the Code, was passed. That was not the stage for the petitioner to have filed any application for modification.

18. In any case, the petitioner did not prove this



fact before the learned Court below, by adducing necessary evidence that he was unemployed.

19. In view of the discussion as above, this application is disposed of in following terms:-

(i) There is no interference with the quantum of monthly maintenance allowance awarded by the learned Court below;

(ii) The petitioner shall not be required to pay maintenance allowance from February, 2013 to January, 2014, since he was in custody in connection with the criminal case filed by Opposite Party No. 2 for nearly six months;

(iii) The arrears of maintenance allowance from the date of making of the application shall be calculated accordingly and no coercive step shall be taken against the petitioner if entire arrears are paid to Opposite Party No. 2 within a period of six months from today.

(iv) The amount, which the petitioner had agreed to pay to Opposite Party No. 2 at the rate of Rs. 2,000/- per month, as recorded in the order, dated 06.08.2013, shall be inclusive of the said final determination of monthly maintenance allowance by the learned Court below and arrears shall be calculated after adjusting the said amount. In other words, the petitioner is not required to pay additional sum of Rs. 2,000/- per month over and above what has been



directed to be paid by the learned Court below, under Section 125 of the Code.

(v) It will be open to the petitioner to apply for alteration of monthly maintenance allowance in the changed circumstances by making appropriate application before the learned Court below.

20. The order impugned stands modified to the extent mentioned above.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	26.04.2017
Transmission Date	26.04.2017

