

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.8259 of 2014

Arising Out of PS.Case No. -49 Year- 2008 Thana -DOMESTIC VIOLENACE District- PATNA

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Shyam Kumar Chaudhary, son of Nawdeep Choudhary, resident of Qr. No. 7/9, Street No. 85, Simjudi Chittranjan, P.S.- Chittranjan, District- Burdman, West Bengal.

.... Petitioner/s

Versus

1. State of Bihar
2. Bharti Choudhary, wife of Sri Shyam Kumar Choudhary, Daughter of Sri Kameshwari Mandal, Residing at A/5, Surya Bihari Colony, Phase No. II, Ashiana Nagar, P.S.- Rajiv Nagar, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Surendra Kumar Singh, Advocate.
Mr. Niranjana Prasad Singh, Advocate.

For the Opposite Party/s :

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 17-08-2017

Heard learned counsel for the parties.

2. The petitioner has filed this application, under Section 482 of the Cr.P.C., 1973, against the order dated 14.07.2010 passed by learned Additional District and Sessions Judge-X, Patna in Criminal Appeal No. 287 of 2009 whereby he has affirmed the order dated 13.08.2009 passed by Judicial Magistrate, 1st Class, Patna in Domestic Violence Case No. 49 of 2008 directing the petitioner to pay 50% amount of the salary to wife.

3. Learned counsel appearing on behalf of the petitioner submits that the petitioner, a Fitter in the Indian Railway, gets salary



of Rs. 45,400/- and other admissible allowances and after deduction including 50% maintenance amount to his wife, he gets only 23,230/- per month. He submits that petitioner has to maintain his old parents also, so interim maintenance amount granted by the court below is excessive rather it should be $\frac{1}{3}^{\text{rd}}$ of the salary.

4. Learned counsel appearing on behalf of the O.P. No. 2 submits that husband has deserted his wife (O.P.No. 2) and his two children who are students of Class-XI. He submits that earlier to make endeavour for reconciliation between both sides, the matter was referred to Mediation Centre but the husband did not appear there, so mediation could not take place. He further submits that father of the petitioner is a retired government servant and he gets pension and has also received his retiral benefits, so the petitioner has no liability to maintain his parents. He also submits that the order of interim maintenance was passed on 13.08.2009 but the interim maintenance amount is not being paid regularly, only from March, 2016 the interim maintenance is being paid.

5. Having considered the rival submissions of both sides, the court finds that interim maintenance order was passed by the Judicial Magistrate on 13.08.2009 under Section 23 of the Protection of Women from Domestic Violence Act, 2005, which reads as such:

“23. Power to grant interim and *ex parte* orders.- (1) In any proceeding before him under this Act, the Magistrate may



pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application *prima facie* discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.”

6. In order to pass the interim maintenance, a Magistrate is not required to first adduce the evidence for getting proof regarding the income of the husband rather the amount of maintenance should be just and proper so that the complainant's and her children can lead their life as per their standard of living.

7. In the present case, it is an admitted position that the petitioner is a Railway employee drawing salary approximately Rs. 50,000/- per month and O.P. No. 2 (wife) is living with her two grown-up children presently studying in Class-XI. So considering the income and liability of the petitioner as well as requirement of the maintenance of the wife and maintenance including expenditure on education of her two children, the interim maintenance amount granted by the court below i.e., Rs. 23,300/- is not excessive amount. It also appears that the court below directed the petitioner to pay interim maintenance amount from the date of the order i.e., 13.08.2009, so the petitioner is required to pay due amount to the wife



since then. Further, the court below is directed to expedite the hearing of the case in accordance with law.

8. In the result, this application stands dismissed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.08.2017
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