

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.190 of 2016

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

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Sanjay Kumar Saini Son of Haricharan Ram Resident of
Bulakmantoli, Doranda, Police Station - Doranda, District -
Ranchi Jharkhand.

.... Petitioner

Versus

1. Sunita Kumari Kashyap Wife of Sanjay Kumar Saini and
Daughter of Ramautar Malakar
2. Lisa (Minor) Daughter of Sanjay Kumar Saini and under
guardianship of her mother Both above residents of Magadh
Colony, Road No. 10, House No. 404, Police Station - Magadh
Medical, District - Gaya, Bihar.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Advocate
Mr. Avinash Kumar, Advocate
For the Respondent/s : Mr. Shailesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT

Date: 28-03-2017

Heard learned counsel for the petitioner and
learned counsel for the opposite parties.

2. The petitioner is the husband of opposite party
no. 1 and father of opposite party no. 2 who is a minor
girl. He is aggrieved by order dated 10.12.2015, passed
by the learned Principal Judge, Family Court, Gaya in
Miscellaneous Case No. 50 of 2008, whereby he has
directed the petitioner to pay monthly allowance at the



rate of Rs. 10,000/- per month to opposite party no. 1 and Rs. 6000/- per month to opposite party no. 2 in exercise of power under Section 125 of the Code of Criminal Procedure.

3. The challenge to the said order is on two counts. It is contended on behalf of the petitioner that the court below has not taken into account the status of opposite party no. 1 and her earnings; as an advocate practicing at Gaya Civil Court since 1999, Additional Public Prosecutor, Assistant Government Pleader and Member, Juvenile Justice Board at Gaya. Secondly, It is submitted that the findings recorded by the court below that income of the petitioner is Rs. 40,000/- is perverse and without any evidence.

4. Learned counsel appearing on behalf of the opposite parties, while defending the impugned order, has submitted that it is true that opposite party no. 1 had joined legal profession in the year 1999, but had discontinued her practice after her marriage with the petitioner and she resumed practice only in the year 2007. He has also submitted that admittedly the petitioner's income from salary as an employee of a private company is Rs. 28,186/-, as has been mentioned in the impugned order.



5. He has further submitted that the petitioner has other sources of income including rent which he receives from the two houses which the petitioner possesses at Ranchi. It has also been submitted that the petitioner, in addition, has substantial immovable property at Chatra.

6. I have perused the impugned order. This is not in dispute that opposite party no. 1 is the wife of petitioner and opposite party no. 2 is their minor daughter. From the impugned order, I find that there is no basis mentioned in the court for reaching at the conclusion that the income of the petitioner per month is Rs. 40,000/-. There is no discussion of any evidence in support of the claim that the petitioner earns rent from the two houses which he possesses.

7. I also notice that the court below has not taken into account in objective manner, earnings of opposite party no. 1, to arrive at a definite conclusion that she was not at all in a position to maintain herself.

8. The impugned order, in my view, cannot be sustained, it is, accordingly, set aside. The matter is remanded back to the Principal Judge, Family Court, Gaya to pass an order afresh, on the basis of the evidence adduced at the proceeding under Section 125 of the Code



of Criminal Procedure. Such order must be passed within two months from the date of communication of the present order. In the meanwhile, the petitioner shall keep on paying a sum of Rs. 10,000/- to opposite party no. 1 for maintenance of opposite party no. 2.

9. This application is allowed, but with the observations as above.

(Chakradhari Sharan Singh, J.)

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