

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.428 of 2014

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1. Anjani Devi Wife of Sikandar Yadav resident of Choudhary tola
Kahalgaon, P.S. Kahalgaon, District Bhagalpur

.... Petitioner/s

Versus

1. Sikandar Yadav son of Gouri Gope, resident of Choudhary tola
Kahalgaon, P.S. Kahalgaon, District Bhagalpur at present resident of
Nauwa toli, Purab Tola, Behind Registry Office, Kahalgaon, P.S.
Kahalgaon, District- Bhagalpur
2. Om Prakash Yadav son of Sikandar Yadav, resident of Choudhary tola
Kahalgaon, P.S. Kahalgaon, District Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dr. Manoj Kumar

For the Respondent/s : Mr. Rajiv Ranjan Singh

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER**

4 30-06-2017 Heard Learned Counsel for the petitioner and

learned Counsel appearing on behalf of the opposite
parties.

The petitioner is the wife of Opposite Party No. 2
and is aggrieved by an order, dated 27.11.2013, passed by
learned Principal Judge, Family Court, Bhagalpur, in Misc.
Case No. 22 of 2002, whereby in exercise of power under
Section 125 of the Code of Criminal Procedure, 1973
(hereinafter referred to as "the Code"), maintenance
allowance to the tune of Rs. 5,500/- has been granted in
favour of the petitioner to be paid by Opposite Party No. 2.



The said maintenance allowance has been granted with effect from the date of the order.

The said order is being assailed by the petitioner for two reasons. According to her, the amount of monthly maintenance allowance is insufficient for her maintenance and not proportionate to the income of the Opposite Party No. 2. It has, secondly, been submitted that the application for maintenance, filed under Section 125 of the Code, remained pending for nearly 11 years till the order was passed on 27.11.2013. In that background, the learned Court below ought to have considered allowing the maintenance allowance from the date of application instead of date of the order.

It has also been argued on behalf of the petitioner that during the pendency of this application, situation has changed and the petitioner should be given liberty to apply for alteration in the maintenance allowance, under Section 126 of the Code.

So far as the first plea of the petitioner that the amount of Rs. 5,500/- per month is insufficient, comparing the income of Opposite Party No. 2 is concerned, I am not convinced. There is finding recorded by the learned Court below that the salary of the Opposite Party No. 2 as on the date of passing of the order was Rs. 19,120/-.



So far as the question of grant of maintenance from the date of filing of the application is concerned, I do not find specific ground taken that during all these years, i.e. during the pendency of the application, no maintenance was given to the petitioner.

The impugned order, therefore, cannot be interfered with on that ground since under Section 125 (2) of the Code gives discretion to learned Principal Judge to allow maintenance allowance from the date of the order or from the date of application for maintenance.

So far as the third plea on behalf of the petitioner that the things have changed during the pendency of the application, it goes without saying that Section 126 of the Code gives a party opportunity to apply for alteration in maintenance allowance in changed circumstances. The petitioner can avail that remedy in accordance with law.

This application is, accordingly disposed of.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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