

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31628 of 2014

Arising Out of PS.Case No. -9 Year- 2011 District- MUZAFFARPUR

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Rajesh Paswan Son of Ramjee Paswan resident of Mohalla- Mithanpura, Police Station- Mithanpura, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Awantika Kumari D/o Ashok Paswan, Wife of Rajesh Paswan
3. Adarsh Raj Minor Son of Rajesh Paswan through his mother Awantika Kumari both presently resided in mohalla- Damuchuk, P.S.- Kazimohammadpur, District- Muzaffarpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vijay Anand

For the State : Mr. Yogendra Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 03-08-2017

This application under Section 482 of the Cr.P.C. has been filed to quash the order dated 26.05.2014 passed by the Principal Judge, Family Court, Muzaffarpur in Maintenance Case no. 09 of 2013 whereunder the petitioner has been directed to pay Rs. 3000/- per month for the maintenance of O.P. no. 2 and her minor son. He was further directed to pay the arrears of interim maintenance within three months from the date of this order.

2. Heard both sides and perused the records.

3. It has been submitted that this petitioner is husband of O.P. no. 2 and father of O.P. no. 3. The petitioner has filed a Matrimonial



Miscellaneous Case no. 38 of 2011 before the Principal Judge, Family Court, Muzaffarpur under Section 9 of Hindu of Marriage Act for restitution of conjugal right. The wife of the petitioner is not willing to live at the place of this petitioner and she is residing with her parents. The father of the O.P. no. 2 is a government employee in Gandak Project, Irrigation Department. He is getting good salary and is maintaining the O.P. no. 2 and her son. The petitioner has no earning of his own. He is maintaining himself and his old parents by milk business for which he has kept two or three cows. The learned Principal Judge without ascertaining the actual income of this petitioner, has ordered to make payment of Rs. 3000/- per months. The said order is without any basis and is fit to be quashed. The learned APP, opposed the submissions.

5. On perusal of impugned order and the annexures enclosed with the application, I find that the O.P. no. 2 is legally married wife of this petitioner. She was married on 28.05.2002 and from the said wedlock, she got a son in the year 2005. The wife has asserted that immediately after marriage, her husband started torturing and she was forced to leave the matrimonial house. She is presently residing with her son at the place of her parents since 2007. The petitioner has filed a Misc. Case no. 38 of 2011 for restitution of conjugal right. The income and status of father cannot be taken into consideration



for the maintenance of the O.P. no. 2 and her son. The petitioner has simply stated that his wife has her own income, but he has not stated as to from which source, she is earning. On the other hand, the petitioner is admittedly has a milk business. The impugned order directing the petitioner to pay an amount of Rs. 3000/- was passed on 26.05.2014 and since then more than three years have already passed over. The son of the O.P. no. 2 by this time is aged about 12 years. In presence economic scenario, the order directing the petitioner to pay Rs. 3000/- per month for the maintenance of O.P. no. 2 and her son (aged about 12 years) on all count cannot be said to exaggerated.

6. In view of the above facts, I do not find any merit in the Cr. Misc. application. Accordingly, this application is dismissed.

(Sanjay Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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