

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.749 of 2015

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1. Shishu Pal Patel S/O- Ram Swaroop Singh, R/o Mohalla- Harischandra Nagar, P.S.- Beur, District- Patna

.... Petitioner/s

Versus

1. Sangita Devi W/O- Shishu Pal Patel, D/O- Ishwar Prasad, Resident of village- Andi, P.S.- Asthawan, District- Nalanda

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar
Mr. Ashutosh Kumar
Mr. Uday Pratap Singh
For the Respondent/s : Mr. Sudhir Kumar

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

2 13-07-2017 Heard learned Counsel for the petitioner and learned Counsel appearing on behalf of the Opposite Party.

The petitioner is husband of the Opposite Party. He is aggrieved by the judgment and order, dated 22.12.2014, passed, by learned Principal Judge, Family Court, Nalanda, at Biharsharif, in Maintenance Case No. 139M of 2012, whereby the learned Principal Judge has allowed monthly maintenance allowance at the rate of Rs. 6,000/- per month in favour of the Opposite Party from the date of the order and Rs. 3,000/- per month from the date of filing of the application till passing of the order, in exercise of power under Section 125 of the Code of



Criminal Procedure, 1973.

The sole ground, which has been taken on behalf of the petitioner, to assail the impugned order, dated 22.12.2014, is that a matrimonial case has been filed by the petitioner being Matrimonial Case No. 620 of 2012 before the Court of learned Principal Judge, Family Court, Patna, in which the Court has allowed a sum of Rs. 2,000/- per month, payable for maintenance *pendente lite* to the Opposite Party. A sum of Rs. 10,000/- has also been awarded in her favour as litigation cost in that case. According to the petitioner, the Opposite Party suppressed this fact in the proceeding before the learned Principal Judge, Family Court, Nalanda, at Biharsharif, leading to passing of the impugned order. It is also his case that the petitioner did not have any notice about the said proceeding under Section 125 of the Code of Criminal Procedure, before the learned Principal Judge, Family Court, Nalanda, at Biharsharif.

This is not in dispute that by an order, dated 24.06.2014, the learned Principal Judge, Family court, Patna, has allowed monthly maintenance allowance at the rate of Rs. 2,000/- during the pendency of the said matrimonial case on a petition filed by the Opposite Party under Section 24 of the Hindu Marriage Act. This fact was



not brought to the notice of the learned Principal Judge, Family Court, Nalanda, at Biharsharif, which is evident from the impugned order.

Mr. Sandeep Kumar, learned Counsel appearing on behalf of the petitioner, has submitted that the impugned order is a nullity in the eye of law in view of the Supreme Court's decision, in the case of **Dalip Singh v. State of U.P. and Others**, reported in **(2010) 2 SCC 114**.

Since there is no dispute that the Opposite Party has been allowed maintenance under Section 24 of the Hindu Marriage Act by the learned Principal Judge, Family Court, Patna, and the Opposite Party, by concealing this material fact obtained the impugned order, dated 22.12.2014, the same deserves to be set aside. The impugned order, dated 22.12.2014 is accordingly set aside.

This application is allowed.

Mr. Sandeep Kumar, learned Counsel for the petitioner, has pointed out that in the light of the impugned order, dated 22.12.2014, passed by the learned Principal Judge, Family Court, Nalanda, at Biharsharif, certain deductions have been made from the salary of the petitioner by his employer at Kanpur for payment to the Opposite Party.



It is directed that the said amount shall be adjusted against the amount payable to the Opposite Party in the light of the order passed in Maintenance Case No. 620 of 2012, dated 24.06.2014.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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