

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.838 of 2015

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1. INDRASAN GOND @ INDRARAJ @ INDRASAN S/o Sukadh Gond,
Resident of Village - Dalia P.S. - Gothni District - Siwan.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Lal Muni Devi, W/o Indrasan Gond Resident of village - Peoli, P.S. -
Mirganj, District - Gopalganj.

.... Respondent/s

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with

Criminal Revision No.758 of 2015

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

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1. Lalmuni Devi Wife of Indrashan Gon @ Indra Raj Resident of Village &
P.O. Peoli, P.S. Mirganj, District Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Indrashan Gon @ Indra Raj Son of Sukadh Gon At present Executive
Engineer, Bhawan Pramandal Building Construction Department,
Gulzarbagh, Patna (Bihar), Permanent address Village- Daraila, P.S.-
Guthani, Dist- Siwan.

.... Respondent/s

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Appearance :

(In CR. REV. No.838 of 2015)

For the Petitioner/s : Mr. Tara Nath Jha

For the Respondent/s : Mr. Md.Iftekhar Mahmood(App)

(In CR. REV. No.758 of 2015)

For the Petitioner/s : Mr. Ramchandra Sahni

For the Respondent/s : Ms. Renuka Ratnakar (App)

For the Intervenor : Mr. Nityanand Mishra

Mr. Balmuki Pandey

Mr. Bhaskar

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI

SHARAN SINGH

ORAL ORDER

3 09-05-2017

An order, dated 28.07.2015, passed by learned



Principal Judge, Family Court, Gopalganj, in CIS Case No. Miscellaneous 221 of 2013 (Old Case No. Miscellaneous 24 of 2012) is under challenge in both the criminal revision applications, filed under Section 19 (4) of the Family Courts Act. The said order has been passed by learned Principal Judge, Family Court, Gopalganj, in a proceeding under Section 127 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code"), initiated by Opposite Party No. 2 in Criminal Revision No. 838 of 2015, namely, Lal Muni Devi (hereinafter referred to as 'Opposite Party No. 2'). By the said order, the learned Court below has allowed the said application by enhancing monthly maintenance allowance at the rate of Rs. 5,000/- from July, 2014.

For the benefit of convenience, the parties of the two cases have been described in the present judgment and order according to their position in Criminal Revision No. 838 of 2015.

The relationship of husband and wife of the petitioner, in Criminal Revision No. 838 of 2015, namely, Indrasan Gond @ Indraraj @ Indrasan (hereinafter referred to as 'the petitioner'), with Opposite Party No. 2 is not in dispute.

According to the petitioner, at the time of



making of the order, he was serving as a Class-IV employee in Building Construction Department, Government of Bihar. He has, however, since retired and is dependent on his post-retiral benefits only. In that circumstance, according to him, direction for payment of monthly maintenance allowance at the rate of Rs. 5,000/-, being excessive, is improper.

Assailing the said impugned order, the Opposite Party No. 2, on the other hand, has raised a plea in Criminal Revision No. 758 of 2015 that a sum of Rs. 5,000/- per month is not adequate for her maintenance and is not proportionate to the income which the petitioner receives as salary. It is her case that monthly income of the petitioner from the salary is nearly Rs. 30,000/- and she is entitled for one-third of the said amount.

So far as the plea of the petitioner that this Court should interfere with the impugned order on the ground that it is not possible for the petitioner to pay Rs. 5,000/- after his superannuation, in my view, is taken care of by Section 127 (i) of the Code, which reads thus:

"127. Alteration in allowance

(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance, or ordered under the same section to pay a



monthly allowance to his wife, child, father of mother, as the case may be, the Magistrate may make such alteration in the allowance as he thinks fit:

Provided that if he increases the allowance, the monthly rate of five hundred rupees in the whole shall not be exceeded."

The petitioner had always the opportunity to apply for alteration in allowance in changed circumstances on the ground that his monthly income, consequent upon his superannuation, has gone down, under Section 127 of the Code.

So far as the plea of Opposite Party No. 2 that the learned Court below ought to have allowed her one-third of the salary which the petitioner was getting, in the light of the Division Bench decision, in the case of **Shweta Kumari v. Neeraj Kumar**, reported in **2012 (4) PLJR 86**.

There is no dispute that monthly salary of the petitioner, during the relevant point of time, was Rs. 29,700/-. In the facts and circumstances of the case, the impugned order deserves interference as the monthly maintenance amount, which has been fixed by the learned Court below, in my view, is not proportionate and should be, at least, 25 per cent of the monthly income of the petitioner from the salary.



The impugned order is accordingly modified and the Opposite Party No. 2 is held entitled for a sum of Rs. 7,500/- in stead of Rs. 5,000/-, as allowed by the learned Court below.

These two criminal revision applications are disposed of with the modification, as above.

I. A. No. 1555 of 2016 has been filed, by someone, who claims to be the second wife of the petitioner, for the purpose of intervention in the present proceeding.

The said application is not maintainable as she has no *locus standi* since this is not in dispute that the relationship of the petitioner and the Opposite Party No. 2 of husband and wife is still surviving.

I. A. No. 1555 of 2016 stands dismissed as not maintainable.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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