

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.354 of 2016

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Md. Sarfaraj Alam, Son of Md. Juber Alam, Resident of
Chitragupt Nagar, Ward No. 21, P.S. Araria, District Araria.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Bibi Nazia Nasrin, Wife of Md. Sarfraz Alam, Daughter of late Nasim Akhtar Faiji.
3. Ukwa, Daughter of Md. Sarfaraj Alam and Bibi Nazia Nasrin, Minor Child under guardianship of Bibi Nazia Nasrin, Opposite Party No. 2.

Both Opposite party Nos. 2 and 3 resident of Chitragupt Nagar, Ward No. 21, P.S. + District Araria, at Present Islamnagar in front of petrol pump, Hospital Road, Araria, P.S. + District Araria.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Ziaul Quamar, Adv.

For the State : Mr. Bhanu Pratap Singh (App)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

4 27-03-2018 The petitioner has challenged the final order dated 18.02.2016, passed by the learned Principal Judge, Family Court, Araria in Maintenance Case No. 23 of 2012, whereby he has been directed to pay to the opposite party Nos. 2 and 3, *i.e.* his wife and daughter, a total amount of



Rs. 7,000/- per month for their maintenance.

The petitioner was married to the opposite party No. 2 on 17.02.2002 in accordance with the Muslim Religious Rites but after sometime, the petitioner is alleged to have neglected his family. As such, a maintenance case was brought about by the opposite party No. 2.

It was brought to the notice of the learned Family Judge that the petitioner is deaf and dumb and that the opposite party No. 2 had left the matrimonial home of her own accord. She had no love and affection for the petitioner because of the petitioner being a differently abled person. A criminal case was also lodged against the petitioner by the opposite party No. 2. The learned Trial Court took into account the evidence offered on behalf of the parties and came to the conclusion that the petitioner is required to pay an amount of Rs. 7,000/- per month, in all, to the opposite party Nos. 2 and 3.

A Bench of this Court *vide* order dated 21.06.2016 directed the petitioner to pay a monthly sum of Rs. 3,500/- per month and issued notice to the opposite party No. 2.

The matter has now become ripe for final hearing.

This Court has also been informed that ever since



the passing of the order by a Bench of this Court to deposit Rs. 3,500/- per month, the petitioner has been paying the aforesaid amount to the opposite party Nos. 2 and 3.

It has also been submitted on behalf of the petitioner that after the final order was passed, the opposite party No. 2 took up a job of the contractual teacher with the Bihar Government. Now, the appointment of opposite party No. 2 has been confirmed and she is a permanent employee as an un-trained teacher and is getting a fixed salary.

The aforesaid fact has not been disputed by the learned counsel appearing for the opposite party No. 2.

Section 125 of the Code of Criminal Procedure, 1973 requires that a person could be directed for making payments towards the maintenance of his wife, children or parents, provided his wife is unable to maintain herself.

In view of the undisputed fact that the opposite party No. 2 is now earning money because of her employment, it cannot be said that she is unable to maintain herself.

Thus, any order passed by the Family Court directing the petitioner to pay a monthly maintenance to opposite party No. 2 would have to be rescinded. Admittedly, the daughter of the petitioner, who has been impleaded as opposite party No. 3, is not married and is



dependent on opposite party No. 2 or the petitioner.

In that view of the matter, the petitioner is directed to pay an amount of Rs. 3,500/- per month to the opposite party No. 3 from the month of April, 2018.

Whatever money has been paid by the petitioner to the opposite party Nos. 2 and 3 shall not be questioned by him and shall not be asked to be refunded.

The present revision petition is, thus, disposed of with a modification in the order passed by the learned Family Court.

The petitioner would now be under an obligation to pay to opposite party No. 3 only, an amount of Rs. 3,500/- per month, till the time she is married.

With the aforesaid modification in the order, the present revision petition stands disposed of.

(Ashutosh Kumar, J)

Praveen-II/-

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