

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.227 of 2013

In
Miscellaneous Appeal No.10 of 2012

Arising Out of PS. Case No.- Year- Thana- District- Gaya

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Upendra Kumar Singh Son Of Late Dinesh Prasad Singh Resident Of Village
Jamuna, Police Station - Imamganj, District - Gaya

... .. Petitioner/s

Versus

Reeta Kumari Wife Of Upendra Kumar Singh And D/O- Shri Sachidanand
Singh Resident Of "Chichara House", Nutan Nagar, P.S. - Civil Lines, Town
And District - Gaya

... .. Respondent/s

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Appearance :

For the Petitioner : Mr. Rajendra Prasad Singh, Sr. Advocate.
Mr. Onkar Kumar
For the Respondent : Mr. Md.Imteyaz Ahmad
For the Opposite Party : Mr. D.K. Sinha, Sr. Advocate.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

27 26-07-2018 Heard Mr. Rajendra Prasad Singh, learned
senior counsel for the petitioner and Mr. D.K. Sinha,
learned senior counsel for opposite party no. 2.

The petitioner/husband has challenged the final
order dated 21.11.2011 passed by the learned Principal
Judge, Family Court, Gaya in Miscellaneous Case No.
104 of 2006, whereby the petitioner has been directed
to make payment of Rs. 40,000/- per month to the
opposite party towards her maintenance.

The dispute between the petitioner and opposite
party (spouses) dates back to the time when they
started living separately. The parties before the court



below had their own views about the reason for failure of the marriage. What was not disputed before the court below was that the petitioner had betrothed the opposite party, lived with her and also fathered a child who is now a grown up man and employed as Branch Manager in a Bank.

Since the other aspects dealt with by the learned Principal Judge in the order impugned would not be necessary for disposal of the present petition, they are not being adverted to in the present order. The dispute only is with respect to the fixation of quantum of maintenance which the petitioner has been directed to pay.

What is of some relevance is that when the petitioner was granted anticipatory bail, he was directed to pay Rs. 5000/- per month to the opposite party as a condition precedent for his enjoying the aforesaid privilege granted by the court. Later, in the proceeding under Section 125 of the Code of Criminal Procedure, the present order was passed directing the petitioner to pay an amount of Rs. 40,000/- per month to opposite party. The payments, according to opposite party, was not being made regularly and hence an application was filed before this Court seeking cancellation of bail of the petitioner. The aforesaid effort of opposite party to have



the bail cancelled, failed because the Bench took note of the fact that now with the passing of the final order, requiring the petitioner to pay Rs. 40,000/- per month, the condition imposed at the time of bail of making payment of Rs. 5000/- per month to opposite party, was not required to be continued.

Taking into account the aforesaid fact, learned senior counsel appearing for opposite party has submitted before this Court that this obviously meant that the petitioner agreed to pay Rs. 40,000/- to opposite party and factually speaking, he also continued making payment of the aforesaid amount for some time. In that view of the matter, it would not be in the mouth of the petitioner to say that such amount is excessive.

Mr. Rajendra Prasad Singh, learned senior counsel however has disputed the aforesaid assertion and has stated that some money definitely has been paid to opposite party, but nothing has been paid pursuant to the final order passed by the family court directing him to pay Rs. 40,000/- per month.

No effort has been made by the learned counsel for the parties to bring on record any proof of the fact whether maintenance pursuant to the order passed by the family court has been paid or not paid.

Challenging the aforesaid order, Mr. Rajendra



Prasad Singh, learned senior counsel has submitted that the son born out of the wedlock of the petitioner and opposite party has now attained majority and is also gainfully employed as Branch Manager of a Bank and the opposite party has been residing with him. He therefore submits that the provisions under Section 125 of the Code of Criminal Procedure which is meant for preventing vagrancy in women in cases of failed marriages, is not applicable in this case. Since the opposite party is being taken care of by her son, there is no requirement of the petitioner to make payment for her maintenance.

The aforesaid submission is vehemently opposed by learned counsel appearing for opposite party no. 2. It has been submitted by him that the petitioner cannot escape the responsibility of a husband and since he has the wherewithals/means to pay reasonable amount for the maintenance of his wife (opposite party), he cannot be permitted to shirk the aforesaid responsibility. It has further been submitted that the quantum of maintenance is fixed in terms of the level/standard of living of the husband and maintenance does not merely mean any amount thrown in the lap of the hapless wife.

From the perusal of the order impugned, this



Court does not get any idea as to how the maintenance amount of Rs. 40,000/- per month was fixed by the family court. What has been recorded in the order is that the petitioner disclosed that he had an income of Rs. 12000/- per month, but the other witnesses offered on behalf of opposite party stated a different figure as the monthly income of the petitioner. However, the opposite party could lay her hands upon certain document which indicated that the petitioner was the owner of several commercially pliable vehicles. The family court therefore was of the view that the petitioner had not come before him with clean hands and had concealed from the court his real income. As such, whatever was prayed in the petition of the opposite party was allowed but no ground was given in the order.

Mr. Rajendra Prasad Singh, learned senior advocate has submitted that this methodology of fixation of quantum of maintenance is absolutely unheard of and cannot be sustained in the eyes of law. If at all the family court was of the view that necessary facts regarding the financial health of the petitioner was not brought to its notice, it was open for the court to ask for an affidavit of assets and liabilities of the petitioner. That not having been done, the order merely reflects that because of some statement having been made by the



opposite party that the petitioner had more income than what he declared before the court, the court, perhaps as a punitive measure, fixed the quantum of maintenance to the figure which was prayed for in the petition preferred by opposite party.

This submission made on behalf of the petitioner finds favour with this Court. In the absence of any specific reason or grounds for fixing a particular figure, the order impugned cannot be sustained in the eyes of law.

That apart, much time has elapsed since the order was passed and it is understandable that the situation of both the spouses have undergone change. This Court does not know whether the petitioner has gain in his financial health or whether the opposite party is now in a position to maintain herself with the assistance given by her son. In any view of the matter, the changed circumstances ought to be taken into consideration for fixing any maintenance amount.

What is beyond doubt and cavil is that the petitioner cannot escape from his responsibility of maintaining his wife. What is to be decided by the family court now is the financial health of the petitioner, the requirement of opposite party of the amount which would make her live with the same standard as her



husband and whether the parties, may, in the aforesaid circumstances, contemplate of an amicable settlement with respect to the maintenance.

For the aforesaid aspects to be decided in accordance with law, this Court is of the view that the order impugned be set aside and be remitted to the Principal Judge, Family Court, Gaya for giving a fresh hearing to the parties and pass a reasoned order in accordance with law.

However, since long time has elapsed and some amount has been paid by the petitioner to opposite party as also that the opposite party shall require, in the interregnum period, money for her maintenance, this Court directs that the petitioner shall pay Rs. 20,000/- per month from the month of July, 2018 to the opposite party provisionally till the time the Principal Judge, Family Court, Gaya finally decides the petition/issue. The family judge shall also ensure that the direction of this Court with respect to the interim payment to opposite party is being carried out by the petitioner in letter and spirit. While disposing of the petition, the family court shall also take into account as to the maintenance amount would be reckoned from which date and if it is an anterior date, he would also specify the mode of paying the arrears. If at all the amount of the arrears



swells-up to a huge amount, the court below shall also consider the option of fixing installments.

It is expected that the parties shall cooperate with the family court for him to come to a final conclusion within a reasonable period of time.

This Court expects that the family court, on production/receipt of a copy of this order shall commence hearing of the petition in right earnest and would conclude the proceedings preferably, within a period of six months from the date the hearing commences.

With the aforesaid observation/direction, the petition is disposed off.

(Ashutosh Kumar, J)

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