

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.112 of 2016

=====

Md. Mahmood Alam @ Md. Mahmood, Son of Md. Israil,
Resident of Village- Bardenga, P.S.- Mahalgaon, District-
Araria.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Bibi Rubiya, Wife of Mahmood Alam @ Md. Mahmood,
D/o Md. Idris, Resident of Village- Bardenga, P.S.-
Mahalgaon, District- Araria.
3. Sarbina, D/o Md. Mahmood Alam @ Md. Mahmood, Minor
represented through her legal guardian her mother Bibi
Rubiya.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s :Mr. Md. Nurul Hoda, Adv.

For the State :Mr. Chandra Bhushan Prasad (APP)

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

4 24-07-2018 The petitioner/husband has challenged the final
order dated 26.08.2015, passed by the learned Principal
Judge, Family Court, Araria in Maintenance Case No. 100
of 2002, whereby, the petitioner has been directed to pay
to opposite party Nos. 2 and 3, an amount of Rs. 5,000/-
per month towards their maintenance.

The petitioner was married to opposite party



No. 2 on 13.02.2001, but the marriage went in rough weather shortly thereafter. Even with the birth of opposite party No. 3, the situation did not improve and ultimately the petitioner is alleged to have ousted his wife and daughter from the matrimonial home.

During the proceedings before the Court of learned Principal Judge, Family Court, Araria regarding maintenance, it was argued on behalf of the petitioner that in view of Ext.-A, which is the *Ekrarnama* executed by the parties/spouses, the opposite party No. 2 had agreed that she would not claim anything after what was paid to her at the time of divorce.

It has been argued on behalf of the petitioner that the aforesaid ground was not considered in right perspective and the aforesaid submission of the petitioner was rejected on the slender ground that the *Ekrarnama* contained the left thumb impression of the opposite party No. 2, which could not have been treated as an evidence, unless proved by the expert of the fingerprint or otherwise. It has been submitted that the court below completely misdirected himself in not accepting the L.T.I. of the opposite party No. 2 on the aforesaid piece of document (Ext.-A), even when the same was not denied by the opposite party No. 2.



The other issues which were raised by the petitioner before the learned Family Court was that the opposite party No. 2 had not remained chaste. In support of the aforesaid contention, it has been urged by the petitioner that because of the association of opposite party No. 2 with one Md. Wasique, she had become pregnant. However, the aforesaid ground could not be pressed to its logical conclusion, as no evidence was brought forth on behalf of the petitioner for proving the termination of pregnancy of opposite party No. 2 after her divorce with the petitioner. Lastly, it has been argued that prior to his marriage with opposite party No. 2, he had married another women with whom he has been residing till date. The petitioner, it has been submitted, is also under an obligation to maintain his first wife.

The court below, after having gone through the deposition of the witnesses offered on behalf of the spouses, was of the view that the opposite party No. 2 had not remarried after the divorce and, therefore, was entitled to maintenance. The quantum of maintenance was fixed by taking into account that the opposite party No. 2 had to maintain a daughter also, born out of her wedlock with the petitioner. As such, an amount of Rs. 5,000/- per month was fixed towards the maintenance of



opposite party Nos. 2 and 3.

From the perusal of the order impugned, it appears that the court below has not at all adverted to the grounds taken by the petitioner towards fixing the quantum of maintenance.

By way of supplementary affidavit, learned counsel for the petitioner has brought on record the fact that he is having a low income which is demonstrated by the *Ration* card of the petitioner, which is under the B.P.L. category. The court below has completely avoided to discuss anything about the financial strength/competence of the petitioner.

Regard being had to the overall circumstances of the case and the fact that the petitioner is having responsibility of maintaining other members of the family as well, this Court is of the view that interest of justice and of the parties would be sufficiently met if the order impugned is modified to the extent that the petitioner be directed to pay an amount of Rs. 3,500/- per month towards the maintenance of opposite party Nos. 2 and 3.

The order impugned is modified accordingly.

The petitioner would be under an obligation to make payment of Rs. 3,500/- per month to the opposite party Nos. 2 and 3 towards their maintenance from the



date of the passing of the final order, *i.e.* from 26th August, 2015. The payment shall be made on monthly basis without there being any default on the part of the petitioner.

The arrears of the maintenance shall be paid by the petitioner to opposite party No. 2 in one year in twelve equal monthly installments.

If the petitioner fails to comply with the direction and order, referred to above, the opposite party No. 2 shall be at liberty to approach the court below in execution. Whatever has been paid by the petitioner to opposite party Nos. 2 and 3, provisionally, shall be adjusted in the arrears' account.

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

(Ashutosh Kumar, J)

Praveen-II/-

U		T	
---	--	---	--

