

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.48 of 2017

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

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Zeyauddin Ahmad Son of late Amiuddin Ahmad Resident of Bagmali Behind
Madina Masjid PS Hajipur Distt. Vaishali.

... .. Petitioner/s

Versus

Shabhana Tabssam d/o late Tufail Ahmad r/o Sadpura (Kila) P.S. Kazi
Mohamadpur, Distt. Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Soban Asghar

For the Respondent/s : Mr. Sri Akshay Lal Pandit

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

5 10-05-2018 The petitioner is aggrieved by the final order dated 28.11.2016 passed by the learned Principal Judge, Family Court, Muzaffarpur in Maintenance Case No. 258 of 2014 whereby the petitioner has been directed to part with 10% of his take home salary amount to the opposite party no. 2 towards her maintenance.

The learned Family Court has directed that the amount be deducted from the salary and be given to the opposite party no. 2.

The case of the opposite party no. 2 before the court below was that she was married to the petitioner on 20.03.1987 in accordance with Muslim religious and rites. Out of the wedlock of opposite party no. 2 with the petitioner, two children were born. The son of the petitioner as well as opposite party no. 2 has become a



major and hence he does not claim any maintenance. Since the opposite party no. 2 was unable to maintain herself and the daughter born out of the wedlock is unmarried, therefore a claim of maintenance was made by opposite party no. 2 for her and her daughter. It was stated by her before the Family Court that the petitioner is a government servant and at the relevant time was getting a salary of Rs. 35,000/- per month. Additionally, he had some income from the agricultural land and from the rental of the house which is located at Vaishali.

The records further reveal that the petitioner has married again. A case under Section 498-A of Indian Penal Code was lodged against the petitioner. However, on the basis of compromise, the aforesaid case was withdrawn.

As opposed to the aforesaid demand of maintenance, learned counsel appearing for the petitioner has submitted that in the Title Suit filed by the son of the petitioner, a compromise was effected and the matter was referred to the Lok Adalat. The Lok Adalat finally disposed of the matter on 19.03.2006, in which it was agreed upon by the petitioner that he shall pay Rs. 1000/- per month towards the maintenance of opposite party no. 2. The aforesaid amount, it has been submitted on behalf of opposite party no. 2, was never



paid. As a result, an Execution Case No. 1 of 2008 was filed which was sent to the Family Court by the learned District and Sessions Judge, Muzaffarpur.

It appears from the records that the petitioner had preferred a writ petition before this court which was dismissed.

From the evidence available on record, it further appears that because of the cruel behaviour of the petitioner towards his wife, the opposite party no. 2 had to stay separately. Later, she was divorced and the petitioner solemnized another marriage and is having children from that marriage also.

The salary slip of the petitioner has been produced by the learned counsel appearing for the opposite party no. 2. The same is taken on record.

It would further be relevant here to state that the Family Court had initially increased the maintenance amount of Rs. 1000/- which was directed to be paid in terms of compromise in Lok Adalat to Rs. 5000/-. The aforesaid enhancement was set aside on the ground that such an order of maintenance was by virtue of a settlement/compromise in a Title Suit and that also before Lok Adalat. This, the court clarified, would not be deemed to be a proceeding of maintenance under Section 125 of the Code of Criminal Procedure for which



the opposite party no. 2 was entitled. As such, a proceeding was initiated under Section 125 Cr.P.C. for payment of maintenance to opposite party no. 2.

The court below has rightly come to the conclusion that the opposite party no. 2 is legally wedded wife of the petitioner who has now been divorced. There is no evidence that she has remarried. The argument made on behalf of the petitioner that in case of divorce of a Muslim woman, she is not entitled to any maintenance, has no legs to stand. Till the time, a Muslim woman is married again she is entitled to maintenance. Apart from this, the further argument of on behalf of the petitioner is that if there had been a settlement between the parties then it can necessarily be presupposed that the separate residence or divorce of the spouses was mutual. In that event, Clauses 4 and 5 of Section 125 Cr.P.C. would dis-entitle the wife to seek maintenance.

The aforesaid ground has been noted only to be rejected.

The divorce in the present case is not mutual. It has been effected at the instance of the petitioner. The separate residence was only by virtue of settlement which was arrived at between the parties in the Title Suit which was filed by the major son of the petitioner. In



that view of the matter, Section 125 Cr.P.C. would be squarely applicable to the facts of the case.

The quantum of maintenance, which has been fixed by this Court, does not appear to be excessive except for the addition of Rs. 1000/- per month, which earlier was awarded in the Lok Adalat proceedings.

As such, the order of the Family Court is sustained with the modification in the quantum of maintenance, which the petitioner would be required to pay to the opposite party no. 2. The petitioner shall be required to pay 10% of his gross salary to the opposite party no. 2 positively by 15th day of every month. The other arrangement between the spouses by virtue of an earlier settlement shall subsist. In order to avoid any ambiguity, it is further directed that the aforesaid amount be deducted from the salary of the petitioner by the employer of the petitioner and be given to the opposite party no. 2.

For facilitating such mode of transfer, the opposite party no. 2 shall furnish her bank account number to the employer of the petitioner.

The payment shall be made from the date of passing of the order by the learned Family Court. Any arrears which may have accrued because of the stay having been granted by a Bench of this Court, shall also



be paid within the period of three months from today, failing which the opposite party no. 2 shall be at liberty to proceed ahead for the recovery of such amount in accordance with law.

With the aforesaid direction the present petition is dismissed.

(Ashutosh Kumar, J)

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