

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1163 of 2017

Saket Kumar @ Saket Kumar Singh, son of Basant Singh, Resident of Village- Jasuali Pakauli, P.O- Jasauli, P.S.- Pachrukhi, District- Siwan.

... .. Opposite Party/Petitioner

Versus

Bhawna Singh, Wife of Saket Kumar @ Saket Kumar Singh, Resident of Village- Jasuali Pakauli, P.O- Jasauli, P.S.- Pachrukhi, District- Siwan, at present D/o Ramesh Prasad Singh, R/o Village & P.O.- Ageya, P.S.- Goreakoti, District- Siwan.

... .. Petitioner/Respondent

Appearance :

For the Petitioner	:	Mr. Ashok Kumar Choudhary, Advocate Mr. Ashok Kumar, Advocate Mr. Akshansh Ankit, Advocate
For the Respondent	:	Mr. Ranjan Kumar Dubey, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 03-12-2018

Heard Mr. Ashok Kumar Choudhary, the learned counsel for the petitioner and Mr. Ranjan Kumar Dubey, the learned counsel appearing on behalf of the respondent.

2. The petitioner has filed this Civil Miscellaneous petition against the order dated 09.06.2017, passed by the learned Principal Judge, Family Court, Siwan in Maintenance Suit Case No.101 of 2016 by which the learned Principal Judge directed the petitioner to pay a sum of Rs.2,000/- per month as interim maintenance to his wife under Section 125 Cr.P.C.

3. Mr. Ashok Kumar Choudhary, the learned counsel for the petitioner submits that the petitioner was duped and on



concealment of material facts with regard to mental condition of his wife the marriage was solemnized for which criminal case has already been lodged. The wife has filed the petition under Section 125 Cr.P.C. for grant of maintenance and during the pendency of that maintenance case the order was passed for ad-interim maintenance but there is no material before the Court to show that the petitioner-husband had any income of his own. It is further submitted that the court is legally bound to delve upon such evidence and after taking into consideration of the income of the husband and the income of the wife, the amount of compensation should have been directed to be paid to the wife but the court had directed the husband-petitioner to pay a sum of Rs.2,000/- for ad-interim maintenance to his wife. The learned counsel for the petitioner in support of his contention placed reliance on paragraph 8 and 9 of the judgment of the Hon'ble Supreme Court reported in (2010) 12 SCC 242, Neeta Rakesh Jain v. Rakesh Jeetmal Jain. It is further submitted that even order for granting ad-interim amount of Rs.2,000/- is not sustainable.

4. Contending the submissions of the learned counsel for the petitioner, Mr. Ranjan Kumar Dubey, the learned counsel for the respondent submits that at the time of granting ad-interim maintenance under Section 125 Cr.P.C., no evidence is required to



be adduced. The petition for ad-interim maintenance can be decided on the basis of the petition filed by the parties. The husband in his rejoinder stated that he is unskilled labour and earning only Rs.6,000/- per month. Taking into consideration the aforesaid facts, the learned Principal Judge directed to pay Rs.2,000/- as ad-interim maintenance to the wife. The contention of the wife has not at all been considered. The wife stated in her petition that his husband is earning Rs.4,00,000/- per annum and she prayed for Rs.15,000/- per month as maintenance, therefore, the order does not require any interference.

5. From the facts of the case, it is apparent that the wife filed petition for maintenance when she was driven out from the house of her husband. The petitioner solemnized another marriage and when this fact was reported to the police, police insituted Siwan Mahila P.S. Case No.28 of 2016 and arrested the husband-petitioner and father. Thereafter the respondent no.1, wife of the petitioner, filed maintenance case and also filed petition for grant of ad-interim maintenance. The husband in his rejoinder denied his income as stated by the wife but at the same time admitted that he is unskilled labour and earning Rs.6,000/- per month. Taking into consideration the facts, the learned Principal Judge directed the petitioner to pay only Rs.2,000/- per month as maintenance. The



Hon'ble Supreme Court in paragraph-9 of the judgment in the case of Neeta Rakesh Jain (supra) held that Section 24 provides that in any proceeding under the Act, the spouse who has no independent income sufficient for her or his support may apply to the court to direct the respondent to pay the monthly maintenance as the court may think reasonable, regard being had to the petitioner's own income and the income of the respondent. The very language in which the section is couched indicates that wide discretion has been conferred on the court in the matter of an order for interim maintenance. Although the discretion conferred on the court is wide, the section provides the guidelines inasmuch as while fixing the interim maintenance the court has to give due regard to the income of the respondent and the petitioner's own income. It appears from the facts that the court considered taking into consideration the assertions of the petitioner's wife with regard to the income of her husband but the court considered the assertions made by the husband in his rejoinder to the petition of the interim maintenance that the husband has income of Rs.6,000/- per month and accordingly, directed the husband to pay Rs.2,000/- per month as interim maintenance. The amount of maintenance is proportionate as well as very meagre and based on the statement



made by the husband himself in the rejoinder, therefore, I do not find any illegality in the order impugned.

6. Accordingly, this civil miscellaneous petition is dismissed being devoid of any merit. The learned Principal Judge, Family Court, Siwan is directed to dispose of the maintenance case itself within three months from the date of receipt of this order.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.12.2018
Transmission Date	NA

