

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No. 1008 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- MUZAFFARPUR

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1. Md. Amirul Haque, Son of Late Samiul Haque, Resident of village -
Bhawanipur, Police Station - Manihari, District - Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Samima Khatoon, Wife of Md. Amirul Haque
3. Asfiya Praveen @ Babby
4. Malika Praveen @ Neha, Both daughter of Md. Amirul Haque, All three
resident of village - Misrauliya, Police Station - Sakra, District - Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sajid Salim Khan, Advocate

For the O.P. : Mr. Md. Naushad Uzzoha, Advocate

For the Respondent/s : Mr. Shaym Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 29-08-2018

Heard learned counsel for the parties.

2. This revision application has been filed under
Section 19(4) of the Family Courts Act, 1984 against the order dated
30.09.2015 passed in Maintenance Case No. 261 of 2002, a petition
under Section 125 of the Code of Criminal Procedure whereby the
learned Family Court, Muzaffarpur has ordered the petitioner to pay
Rs.3,000/- per month to the wife-applicant and Rs.2,000/- per month
to each of the minor daughters.

3. Submission of learned counsel for the petitioner is



that the finding of the learned court below that salary of the petitioner, who was an employee in the telephone department, was Rs.10,000/- in the year 2002 i.e. the year of filing of the petition for maintenance and Rs.30,000/- on the date of the order suffers from error of record.

4. Submission is that there was no evidence on the record for such finding, rather Annexure-2 and 2/1 would show that the petitioner was a daily wages employee of the telephone department and his salary for September, 2003 was Rs.2395/- and in the year in July, 2015 his gross salary was Rs.22,625/-. Therefore, the impugned order is not sustainable.

5. Learned counsel for the opposite parties opposed the prayer, however, does not dispute that there was no documentary evidence of the salary of the petitioner before the court below nor the court below insisted the petitioner to bring the documentary evidence which would have been the best evidence of the income of the petitioner.

6. In my view for the aforesaid reason, the finding of the court below is perverse, incorrect and not sustainable in law. Hence, the impugned order is set aside and the matter is remitted back to the court below with direction to procure evidence on actual salary of the petitioner and if the opposite party so desires income from other sources of the petitioner, to ascertain just amount of maintenance



considering the status of the parties. The court below shall dispose of the matter within three months. The petitioner shall fully cooperate before the court below. The order has been passed in presence of the parties.

7. Accordingly, this criminal revision is allowed.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	31.08.2018
Transmission Date	31.08.2018

