

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.49760 of 2018

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1. Dhananjay Upadhyay, Son of Girdhari Lal Upadhyay, Resident of Village- Haldi (Upadhyay Tola), Police Station- Haldi, District- Ballia (U.P.).

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sangeeta Upadhyay Wife of Dhananjay Upadhyay, Resident of Village- Haldi (Upadhyay Tola), Police Station- Haldi, District- Ballia (U.P.), At present Maika- Daughter of Shivjee Chaubey, Village- Jawahi, P.S. Brahmpur, District- Buxar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nachiketa Jha

For the Opposite Party/s : Mr. Sri Rajendra Prasad Nat

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 06-11-2018 Heard learned counsel for the petitioner as well as learned counsel representing O.P. No. 2.

The present application has been preferred for setting-aside the order dated 07.07.2018 passed by learned Principal Judge, Family Court, Buxar in Maintenance Case No. 62 (M)/2017.

By the impugned order, the learned Principal Judge has been pleased to award a maintenance of Rs.5,000/- for the O.P. No. 2 whereas, Rs.3,300/- has been awarded for the only daughter who is born out of wedlock between the petitioner and the O.P. No. 2 and she is admittedly living with the O.P. No. 2 at present.



Mr. Jha, learned counsel representing the petitioner submits that earlier in the Maintenance Case under Section 24 of the Hindu Marriage Act by way of an interim measure a sum of Rs.3,000/- was awarded as maintenance by Balia Court, the said order was challenged in the Hon'ble High Court at Allahabad but in the meantime, because a sum of Rs.8,300/- was being deducted from the salary of the petitioner by virtue of an order passed by the Air Chief Marshal, the O.P. No. 2 took a plea that she would not press for realization of Rs.3,000/- which was awarded by the Court. In that view of the matter, the application preferred before the Hon'ble Allahabad High Court was withdrawn.

Learned counsel further submitted that the learned Principal Judge, Family Court awarded a sum of Rs.8,300/- towards maintenance for O.P. No. 2 and the daughter. Challenge has been made on the grounds inter-alia that the O.P. No. 2 comes from a very reach family as her father owns and possess at least 70 Bighas of land and this O.P. No. 2 being a well qualified lady is herself engaged as Human Resource Manager in a Three Star Hotel and is earning sufficiently. The main ground of challenge is her employment. It is also stated that so far as the maintenance awarded to the daughter is concerned, the petitioner is not challenging that part of the order and willing to pay the said



amount to the daughter. Learned counsel has filed a supplementary affidavit today with certain enclosures to demonstrate that the O.P. No. 2 is self employed.

On the other hand, Mr.Singh, learned counsel representing the O.P. No. 2 submits that this petition is thoroughly misconceived inasmuch as, the petitioner has not disclosed the true and correct fact that earlier by virtue of the order dated 27.06.2015 passed by the Air Chief Marhsal, Air Force, a sum of Rs.8,300/- was being deducted from the salary of the petitioner and the said order of the Air Chief Marshal was never challenged by him. Learned counsel submits that the order passed by the Air Chief Marshal was sought to be withdrawn when it was informed to him that the Court has awarded only a sum of Rs.3,000/- as maintenance, therefore, in reference to the order passed by the learned Court, the Air Chief Marshal withdrew the order awarding maintenance of Rs.8,300/-

In these circumstances, the O.P. No. 2 moved an application before the learned Principal Judge, Family Court, Buxar giving rise to Maintenance Case No. 62 (M)/2017 and during the pendency of the said application she prayed for award of ad-interim maintenance. Following the prayer made by the O.P. No. 2, the learned Principal Judge, Family Court, Buxar went



into the submissions made on behalf of the parties and upon consideration of the entire facts and circumstances as also the materials available on the record decided to award a sum of Rs.8,300/- towards maintenance of O.P. No. 2 and the daughter. It is submitted that so far as claim of the petitioner that the O.P. No. 2 is gainfully employed and is having sufficient income to maintain herself, the same is not correct. It is also stated that O.P. No. 2 is still studying in the subject of Hotel Management and she works sometimes as an intern.

Learned counsel also submits that presently the petitioner is earning a salary of approximately Rs.42,000/- per month. It is also submitted that he has apart from his salary income, other sources in form of the land property and incomes being derived therefrom.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that few things are not in dispute. It is not disputed that earlier a sum of Rs.8,300/- was ordered to be deducted from the salary of the petitioner by the Air Chief Marshal, the said order was not challenged by the petitioner but when the application filed before the Hon'ble Allahabad High Court was withdrawn, a representation was made before the Air Chief Marshal to withdraw the order directing deduction of



Rs.8,300 per month from the salary and on such request the Air Chief Marshal had withdrawn his order.

It is thus, in these circumstances, the O.P. No.2 was required to move to the Court of learned Principal Judge, Family Court, Buxar. The learned Principal Judge has considered the submissions of the parties, the fact that the petitioner is serving in the Air Force and then awarded a sum of Rs.5,000/- towards maintenance of this O.P. No. 2 and Rs.3,300/- to the daughter. The fact that the petitioner is getting a salary of Rs.42,000/- per month has not been denied and even though an attempt has been made at this stage to orally convey this Court that the petitioner is getting Rs.32,000/- per month, the fact remains that the contention of the O.P. No. 2 that he is getting a sum of Rs.42,000/- as salary which is a part of the order impugned in the present case has not been controverted in the pleadings available on the record.

The contention of learned counsel for the petitioner that the O.P.No. 2 is self-employed and is getting sufficient income by way of salary in a Three Star Hotel has not been substantially proved in the supplementary affidavit filed before this Court. This Court also finds that in the learned Court below a plea was taken on behalf of the petitioner that the O.P. No. 2 is a beautician and has her own organization who is providing home



service by employing several beauticians and thereby she is getting Rs.30,000/- per month. The said stand has changed at this stage before this Court. Thus, in the changed stand before this Court, it would not be just and proper for this Court to rely upon to alter or modify the order passed by the learned Principal Judge, Family Court, Buxar.

In ultimate analysis, this Court comes to a conclusion that the learned Principal Judge, Family Court, Buxar has not committed any error in awarding a sum of Rs.8,300/- in total to the O.P. No. 2 and the daughter. Moreover, the petitioner is not challenging the maintenance awarded to his daughter. Therefore, only a sum of Rs.5,000/- which has been awarded to O.P. No. 2 is a subject matter of challenge in the present case which this Court does not find excessive and by no stretch of imagination even if the salary which the petitioner is orally admitting before this Court is taken to be correct. The impugned order does not suffer from any infirmity.

This application is dismissed as having no merit.

In case the petitioner has any material to demonstrate that the O.P. No. 2 is earning sufficiently to maintain herself in the same manner in which her husband i.e. the petitioner is maintaining himself and with the same dignity, he may invoke the



jurisdiction of the Family Court for alteration or modification of the order, but till the existence of the order dated 07.07.2018 he is obliged to pay the amount of Rs.8,300/- per month to O.P. No. 2 without further delay.

The copy of the order shall also be communicated to his employer so that the deduction would be made from his salary every month and the payment shall be made to the O.P. No. 2.

It goes without saying that, if so advised, the O.P. No. 2 shall also be at liberty to invoke jurisdiction of the Court for modifying/altering the quantum of maintenance.

(Rajeev Ranjan Prasad, J)

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