

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.242 of 2016

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

Rajendra Kumar Singh, Son of Late Chhote Lal Singh, Resident of Rampur Maidan Colony, Quarter No. 571/C.D., P.S.- Jamalpur, District- Munger.

... .. Petitioner

Versus

1. Sudha Kumari, wife of Rajendra Kumar Singh.
2. Priyanka Singh, Daughter of Rajendra Kumar Singh.
3. Namrata Singh, Daughter of Rajendra Kumar Singh. All resident of Mohalla- Rampur Maidan Colony, Quarter No. 571/D, P.S.- Jamalpur, District- Munger.

... .. Respondents

with

Criminal Miscellaneous No. 58770 of 2017

Arising Out of PS. Case No.- Year-1111 Thana- District- Munger

Sudha Kumari, wife of Rajendra Singh, resident of Mohalla Rampur Maidan Colony Quarter No. 571/CD, P.S. Jamalpur, District Munger

... .. Petitioner

Versus

1. Rajendra Singh, son of Late Chhotelal Singh, resident of C/o Dr. C.D. Sinha near Old St. Roberts School, P.S. Jamalpur, District Munger
2. Chief Works Manager, Jamalpur Locomotive Workshop, Eastern Railway, Jamalpur, Munger

... .. Opposite Parties

Appearance :

(In Criminal Revision No. 242 of 2016)

For the Petitioner/s : Mr. Suman Kumar Mishra, Advocate

For the Respondent/s : Ms. Sushmita Mishra, Advocate

(In Criminal Miscellaneous No. 58770 of 2017)

For the Petitioner/s : Ms. Sushmita Mishra, Advocate

For the Opposite Party/s : Mr. Anil Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date : 18-12-2018

Cr.Revision No. 242 of 2016 has been filed by the petitioner against the order dated 5.2.2016 passed in Maintenance Case No. 166 of 2014 by which learned Principal Judge, Family Court, Munger has directed the petitioner to pay Rs.8000/- per month to his wife towards her maintenance



since the date of filing of the petitioner, i.e., 1.11.2014 and further directed to pay Rs.4000/- per month to each of his two daughters and further a lump sum amount of Rs.20,000/- towards litigation cost of the maintenance case, whereas Cr.Misc.No. 58770 of 2017 has been filed by respondent/opposite party No.1 of the revision application against the order dated 11.5.2017 passed by Principal Judge, Family Court, Munger in Misc.Case No. 34 of 2016 by which petitioner sought modification of the order dated 5.2.2016 and the same was dismissed by the Family Judge on the ground that as revision application against order dated 5.2.2016 was pending before the High Court, as such he was not interfering with the order.

2. In the revision application admitted fact is that respondent/opposite party No.1 is the wife of the petitioner, who was working in the Railway, and she has three daughters and one son and allegation against the petitioner is that he used to ill-treat the respondent/opposite party No.1 by not providing money to her as maintenance and towards marriage expenses of her elder daughter which she had incurred by taking loan from her brothers and father but he did not return the same. Further case of respondent/opposite party No1 is that she had filed Maintenance Case No.104(M) of 2011 before the Family Court which was disposed of on compromise petition dated 1.5.2012 and for enforcement of that order she had filed several petitions and lastly Family Court ordered for filing fresh maintenance case and as such the maintenance case No. 166 of 2014 was filed. It is the assertion of opposite party that petitioner is Railway employee drawing Rs.50,000/- as salary per month.

3. Case of the petitioner is that respondent/opposite party No.1 is not entitled to maintenance as she is working in DAV Mahila College,



Jamalpur and she herself is able to maintain herself and so far daughters are concerned, they are working on contract basis and as such they have sufficient means to maintain themselves and it is the further case that petitioner has taken loan for the education of his son and the amount is deducted from his salary and he is only getting net salary of Rs.21,591/- per month.

4. After adducing evidence on behalf of parties, learned Family Court found respondent/opposite party No.1 to be wife of the petitioner and she has been deserted and also considering the other fact has allowed the maintenance case directing the petitioner to pay Rs.8000/- per month to his wife towards her maintenance from the date of filing of the maintenance case, i.e., 1.11.2014, and further directed to pay Rs.4000/- per month to each of both daughters from the date of filing of the maintenance case, i.e., 1.11.2014 and further directed to pay a lump sum amount of Rs.20,000/- towards litigation cost of maintenance case. Being aggrieved by the said order, petitioner has preferred the present revision application.

5. During course of argument petitioner was directed to produce his salary slip but neither petitioner has appeared personally nor produced the salary slip. However, ground for assailing the order of the Family Court is that respondent/opposite party No.1 is working in DAV Mahile College and she is getting salary and her daughter is also in contract service and getting salary and as such they are is not entitled to the maintenance. It has also been submitted that respondent/opposite party No.1 along with her daughters is living in Railway quarter provided to him and lastly it has been submitted that petitioner has now superannuated from service and he is getting only pension, as such maintenance amount is excessive.



6. On the other hand, learned counsel for the opposite parties has submitted that though respondent/opposite party No.1 is working in DAV Mahila College but the same is “Bithrahit” and she is not getting salary and one of her daughters was in service on contract and her contract has expired and she is not getting any salary and further submission is that petitioner is not paying the amount of education loan taken towards education of son of the petitioner, rather his son is paying the same.

7. Having heard both sides and from perusal of the record it appears that it is admitted fact that respondent/opposite party No.1 is wife of the petitioner and it appears that relationship between them is strained and petitioner was an Railway employee at that time and his gross salary was 50,000/- per month but as per the impugned order it appears that his salary slip showed his gross income as Rs.53,195/- per month and his net payment was 21,591/-. It further appears that there were several rounds of litigation between the parties and earlier also maintenance case was filed. It further appears that respondent/opposite parties have no source of income though petitioner claims that he was getting only Rs.21,591/- per month as net salary but in spite of direction of this Court to the petitioner to produce the salary slip he has not produced the same, whereas respondent/opposite party No.1 has stated that son of the petitioner is paying education loan amount which has been left by her husband.

8. Considering the aforesaid aspects of the matter, the order dated 5.2.2016 passed by the Family Court directing the petitioner to pay Rs.8000/- per month to respondent/opposite party No.1 and Rs.4000/- to each of both the daughters, appears to be sustainable in the eye of law and as such I find no illegality in the same. Accordingly, the revision application is dismissed.



9. So far Cr.Misc.No. 58770 of 2017 is concerned, this application has been filed against the order dated 11.5.2017 passed by Principal Judge, Family Court, Munger in Misc.Case No. 34 of 2016 whereby and whereunder aforesaid case filed by the petitioner has been dismissed and the petition of the petitioner for modification of the order of maintenance dated 5.2.2016 passed in Maintenance Case No. 166M/14 to the effect that the order of maintenance should be allowed with effect from 14.12.2011, i.e., the date of filing of Maintenance Case No. 104M/11 in compliance with the order dated 28.10.2014 passed in Misc. Case No. 187 of 2014 as per compromise arrived at between the parties and also prayed for amount of expenses to be incurred towards marriage of the daughter.

10. Submission of petitioner (respondent No.1 in revision application) is that earlier also petitioner has moved for maintenance by filing Maintenance Case No. 104M of 2011 and that ended into compromise filed on 1.4.2012 by the parties by order dated 6.10.2012 and as per condition of the compromise she has preferred Maintenance Case No. 166M of 2014 and that order of maintenance will be applicable from 14.12.2011 and also she has prayed for expenses incurred towards marriage of her daughter but the same has been rejected by the Family Judge on the ground that revision against order dated 5.2.2016 passed in Maintenance Case No.166M of 2014 is pending before this Court. Further submission is that petitioner is entitled to the maintenance from 14.12.2011 and also for the marriage expenses.

11. Submission of opposite party No.1 is that as per compromise maintenance amount is deducted from his salary which will appear from the impugned order itself and lump sum amount of Rs.20,000/- as litigation cost has also been paid and if petitioner is aggrieved by the said order of



maintenance in Maintenance Case No. 166M of 2014, she ought to have filed a separate revision application instead of filing the present Misc. Case and as such that has rightly been rejected by the Family Court.

12. Having heard both sides and in the facts and circumstances, as stated above, to my opinion if the petitioner is aggrieved by the order of maintenance passed in Maintenance Case No. 166M of 2014, she ought to have moved this Court in separate revision application instead of filing of Misc. application for modification of the order dated 5.2.2016. Further it is well settled that maintenance amount can be paid either from the date of order or from the date of filing of Maintenance Case and not from before. As such I find no illegality in the order dated 11.5.2017 passed in Misc.Case No. 34 of 2016.

13. In the result, Cr.Revision No. 242 of 2016 and Cr.Misc.No. 58770 of 2017 both are dismissed.

(Vinod Kumar Sinha, J)

spal/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.12.2018
Transmission Date	20.12.2018

