

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.307 of 2019**

Pradeep Mishra @ Pradeep Kumar Mishra Gender-Male, Aged about 37 years, son of Shri Brihaspati Kumar Mishra, resident of Village-Bishunpura, PO-Serukahan, P.S. Mashrak, District-Saran.

... .. Petitioner

Versus

Sindhu Devi wife of Pradeep Mishra @ Pradeep Kumar Mishra, D/o Suresh Mishra presently residing at Village-Sidhwalia, PS-Chapra Mufassil, District-Saran.

... .. Respondent

Appearance :

For the Petitioner : Mr.Jitendra Kumar, Advocate
For the Respondent : Mr.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 10-05-2019

This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 28.09.2018 passed by learned Principal Judge, Family Court, Saran at Chapra in Divorce Case No. 64 of 2016 whereby he has allowed the petition dated 06.06.2018 filed by the respondent under Section 24 of the Hindu Marriage Act, 1955 and, accordingly, directed to pay Rs.2000/- per month as maintenance pendente lite in favour of respondent under Section 24 of the Hindu Marriage Act, 1955.

2. Learned counsel appearing for the petitioner submitted that the order dated 28.09.2018 has been passed by the court below ignoring the fact that the petitioner is paying Rs.3500/- per month as maintenance to the respondent under the



order dated 10.06.2015 passed by the learned Principal Judge, Family Court, Saran at Chapra in Maintenance Case No. 231 of 2013. He contended that the order impugned is contrary to law and the amount awarded by the impugned order as maintenance pendente lite ought to have been ordered to be adjusted against maintenance already awarded earlier against the petitioner under Section 125 of the Code of Criminal Procedure, 1973 (for short 'CrPC'). He contended that the petitioner is a franking machine operator at Saran Civil Court on contractual basis and he gets Rs.11,500/- only. Apart from this, he has no other income. From the said income, he has to maintain his parents, who are quite old and sick.

3. I have heard learned counsel for the petitioner and perused the materials available on record.

4. The object behind Section 24 of the Hindu Marriage Act, 1955 is to provide for maintenance, pendente lite, to a spouse in matrimonial proceedings so that during the pendency of the proceedings the spouse can maintain herself/himself and also have sufficient funds to carry on litigation. During pendency of the divorce proceeding, if the wife establishes that she has no sufficient independent income for her support and the husband



having sufficient income is not maintaining her, it would be open to the wife to claim maintenance pendente lite.

5. The aim and object of Section 24 of the Hindu Marriage Act, 1955 and Section 125 of the CrPC are distinct. Section 125 of the CrPC provides immediate and speedy remedy to the wife and children so as to avoid vagrancy of the wife and the children whereas Section 24 of the Hindu Marriage Act, 1955 provides that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable. The relevant consideration for grant of maintenance pendente lite is that the spouse could not have independent income sufficient for her/his support.

6. In the present case, the respondent pleaded in her application that she has no independent source of income and is residing at her parents' home. She was ousted by her husband from her matrimonial home. She contended that her parents are quite old and are not in a position to support her. The petitioner



filed a rejoinder in the court below wherein he has not even whispered that the respondent has sufficient means to support herself. The contention that the petitioner is a franking machine operator and is earning Rs.11,500/- and has no other independent source of income is being made for the first time before this Court. Such plea had not been advanced in the court below. A plea, which was not taken at the first instance in the proceeding pending before the court below, cannot be permitted to be taken as a ground for challenging an order to be bad. Moreover, the petitioner has not pleaded that he does not have sufficient means to support himself or his deserted wife in his rejoinder. In absence of any pleading on behalf of the petitioner in the court below, no illegality can be found in the order impugned passed by the court below whereby it has allowed Rs.2000/- per month as maintenance pendente lite to the respondent.

7. Accordingly, I am not inclined to interfere with the order impugned in supervisory jurisdiction under Article 227 of the Constitution of India. The application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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