

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2680 of 2018

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

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Rinku Devi @ Rinku Kumari Devi Wife of Ashok Kumar Gupta, Daughter of Sidheshwar Saw, Resident of Village- Simhari, P.S.- Dhanaruwa, District- Patna. at present resident of Mohalla- House of Gopal Pandit, Masaurhi, P.S.- Masaurhi, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar, through the Principal Secretary, Department Of Home, Old Secretariat Bihar, Patna
2. The Director General of Police, Bihar, Patna.
3. The I.G., Patna Division, Bihar, Patna.
4. The D.I.G., Patna Range, Patna, Bihar.
5. The Senior S.P., Patna.
6. The D.S.P., Phulwari Sharif, P.S.- Phulwari Sharif, Patna.
7. The Officer-in-Charge, Phulwari Sharif, P.S.- Phulwari Sharif, District- Patna.
8. Ashok Kumar Gupta, Son of Sri Vaidhnath Saw, Resident of Village- Gonpura, P.O.- Phulwari Sharif, P.S.- Phulwari Sharif, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Singh
For the Respondent/s : Mr. Manish Kumar G.P-4

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 09-04-2019 Heard learned counsel for the petitioner and learned counsel for the State.

This application under Article 226 of the Constitution of India has been filed by the petitioner for commanding the respondent authorities to take stern action against the respondent no. 8 for compliance of the order dated 27.11.2012 passed by the learned Additional Principal Judge, Family Court, Patna in



Maintenance Case No. 216 of 2009 whereby the learned Additional Principal Judge, Family Court has directed respondent no. 8 to pay Rs. 2000/- as maintenance allowance to the petitioner from the date of the order by fifteenth day of every succeeding month.

Learned counsel for the petitioner submitted that after the impugned order dated 27.11.2012 was passed, an application was filed by the respondent no. 8 before the learned Additional Principal Judge, Family Court praying therein for recall of the order dated 07.04.2014 whereby a distress warrant was issued against the respondent no. 8 for non-compliance of the order dated 27.11.2012. The said application was rejected by the court below vide order dated 03.09.2014. Since then the order passed by the court below has not been complied with and the petitioner is not being paid maintenance allowance. She submitted that in the given facts and circumstances of the case, it would be in the interest of justice to direct the respondents to take coercive steps against the respondent no. 8 so that the order passed by the court below allowing maintenance allowance to the petitioner is complied with.

Per contra, learned counsel for the State submitted that the application filed by the petitioner before this court under



Article 226 of the Constitution of India is misconceived. The provisions prescribed under Section 125(3) of the Code of Criminal Procedure give ample power to the court concerned to get its order executed. The provisions of Article 226 and 227 of the Constitution of India cannot be used for the purpose of getting the order passed by the subordinate court to be executed by issuance of a writ in the nature of mandamus by this Court.

Having heard learned counsel for the parties, I find substance in the submission of the State. The petitioner has got statutory remedy under the Code of Criminal Procedure. The proceedings of this Court under Article 226 and 227 of the Constitution of India cannot be used for the purpose of getting an order passed by the court below to be executed.

The writ petition is disposed of with liberty to the petitioner to seek her remedy before the court below itself.

(Ashwani Kumar Singh, J)

pradeep/sneha

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