

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.318 of 2019**

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Manoj Kumar, Son of Sugrib Tanti, Resident of Bajrangbali Road, Nayagaon,
Police Station-East Colony, Jamalpur, District-Munger.

... .. Petitioner

Versus

Moni Kumari, Daughter of Late Ganesh Tanti, Resident of Naya Tola (Fulka),
P.S. -Jamalpur, District-Munger.

... .. Opposite Party-Respondents

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Appearance :

For the Petitioner : Mr. Kamal Kishore Jha, Advocate
For the Respondent : Mr.

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

Date : 18-07-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner challenging the order dated 18.01.2019 passed by the learned Principal Judge, Family Court, Munger in Matrimonial (Divorce) Case No.123 of 2018 whereby the petitioner has been directed to pay Rs.2,000/- towards filing of written statement to the respondent and Rs.5,000/- per month as interim maintenance to the respondent and her three children and also Rs.500/- on each and every date fixed in the case towards litigation cost.

3. Learned counsel appearing for the petitioner submitted that after eleven years of marriage the respondent developed illicit relationship with one Vishal Kuamr. She went to



Kolkata on 05.04.2018. On 08.04.2018, the petitioner came to know that she had fled away with aforesaid Vishal Kumar. In this regard, the petitioner had instituted East Colony P.S. Case No.27 of 2018 in which Vishal Kumar was arrested. On recovery, the statement of the respondent was recorded before a Judicial Magistrate wherein she had clearly stated that she does not want to continue her relationship with the petitioner and she went together with Vishal out of her own sweet will. He contended that having come to know about the illicit relationship of the respondent with Vishal Kumar, the petitioner filed Matrimonial (Divorce) Case No.123 of 2018 on 20.06.2018 in the court of Principal Judge, Family Court, Munger under Section 13 of the Hindu Marriage Act, 1955 with a prayer that after adjudication of the case, a decree of divorce be granted in his favour. In the said suit, the respondent filed an application under Section 24 of the Hindu Marriage Act, 1955 claiming Rs.20,000/- per month as interim maintenance allowance and Rs.3,000/- towards litigation cost. However, the court below, even without taking into consideration the admitted case of illicit relationship of the respondent with Vishal Kumar, allowed the application of the respondent and directed the petitioner to pay interim maintenance and litigation cost vide impugned order dated 18.01.2019. According to him, in view of



the admitted case of adultery, the court below ought to have dismissed the application filed by the respondent.

4. Having heard learned counsel for the petitioner and perused the materials on record, I find that there is no dispute to the fact that the respondent is the legally wedded wife of the petitioner and is living separately. The petitioner has also failed to show that the respondent has any other source of income. The respondent in her application has clearly stated that she is residing in her parental home along with three of her minor children. She has also stated that her father is no more and she has no independent source of income. The petitioner has also not denied the fact that he is a professional photographer. The respondent has stated in her application that the petitioner is also a professional videographer and has got a mixing laboratory of his own. The only ground on which the petitioner is claiming that respondent is not entitled to any maintenance allowance is that out of her own choice she left her matrimonial home and had gone together with one Vishal Kumar.

5. I have also perused the statement of the respondent recorded under Section 164 of the Code of Criminal Procedure in connection with the police case instituted by the petitioner as contained in Annexure-5 to this application. In her statement, she



has categorically stated that the petitioner habitually subjected her to cruelty in various ways. He repeatedly assaulted her and used to demand money from her father.

6. It is true that she has stated that she does not want to live with her husband and had gone together with Vishal, but has denied that Vishal had ever abducted her. She has also stated that Vishal has not done anything wrong with her. The statement of the respondent is sufficient to show the reason as to why she has left her matrimonial home. It does not show anything from which it can be culled out that the petitioner is having any adulterous relation with Vishal.

7. Section 24 of the Hindu Marriage Act, 1955 empowers the court in any proceeding under the Act, if it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his maintenance and necessary expenses of the proceeding, it may, on the application of any one of them order the other party to pay to the petitioner the expenses of the proceeding and monthly maintenance as may seem to be reasonable during the proceeding, having regard to the income of both the applicant and the respondent.



8. The said provision is beneficent in nature. It is the judicial duty of the court to pass appropriate order in case an application under Section 24 of the Hindu Marriage Act is filed in order to see that an indigent spouse may not suffer or starve.

9. Having regard to the facts and circumstances of the case, as discussed above, I see no illegality in the order impugned whereby a meager amount has been allowed in favour of the respondent as interim maintenance allowance.

10. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.07.2019
Transmission Date	NA

