

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.570 of 2016

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

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Santosh Singh S/O Shambhu Singh, R/O village-Bakarpur, P.S.-Sadar Hajipur, District- Vaishali.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Sarswati Devi, W/O Santosh Singh, D/O Ram Darshan Tiwary, R/O village-Bakarpur, P.S.-Sadar Hajipur, District- Vaishali, presently residing at village-Khanpur Khajwatta, P.S.-Dighwara, Districtt- Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Vagisha Pragya V.
For the Respondent/s	:	Mr.Parmeshwar Mehta
For the O.P.no.2	:	Mr. Jainendra Kumar

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

4 16-07-2019 This revision application has been directed against order dated 27.1.2009 passed by the Principal Judge, Family Court, Vaishali at Hajipur in Maintenance Case No.7 of 2009 by which the petitioner was directed to pay Rs.4,000/- per month to O.P.no.2 and Rs.2,000/- to her son.

2. The facts giving rise to this application are that O.P.No.2 married with the petitioner but after the marriage he started demanding dowry and due to non-fulfilment of demand subjected to cruelty and assault. It further discloses that thereafter they tried to kill her by setting her on fire, she anyhow escaped and came to her *maike* since then she is residing in her *maike* and for that she has filed a complaint case



bearing No.3477 of 2007 under Section 498A of the IPC and Sections 3/4 of the D.P.Act, which is still pending in the court of SDJM. Further case of the O.P.no.2 is that her husband is a truck driver as well as he has 10 acres of land in which mangoes, lichi and other cultivation are there and he earns Rs.50,000/- per month, apart from the income from dairy business . On the basis of that O.P.no.2- applicant has prayed for Rs.6,000/- as the maintenance for her and her son.

3. It further appears that the petitioner-husband has appeared in the above maintenance case and filed show cause stating that whole allegation is false and she is of disturbed mind and story of cruelty and torture is false. He has also come with a case that father and brother of the applicant took away a box containing ornaments of his mother worth Rs.40,000/- and cash of Rs.4,000/- , for which the petitioner has filed Complaint case no.1035 of 2006. Petitioner also denied that he is working as a truck driver and he has ten bighas of land and further stated that it is wrong to say that he has a dairy business. On the other hand the applicant is able to maintain herself and her son as she is doing tailoring and tuition.

4. During the trial, altogether three witnesses have been examined on behalf of the O.P.no.2 wife and four



witnesses have been examined on behalf of the petitioner husband, apart from that some documentary evidence has also been filed by the petitioner husband. The learned Family Court on perusal of the evidence both oral as well as documentary has come to a finding that the applicant is house-wife and fully dependent upon her parents and she is unable to maintain herself and her son, whereas the petitioner has neglected and deserted the applicant and refused to maintain her. The learned Family Court has also come to a finding that the petitioner is able bodied and as such he has to maintain the O.P.no.2 and his son and apart from that he is doing cultivation of banana etc. and also possessing driving licence and some time he was engaged in driving also and considering the above he has allowed the maintenance case filed by O.P.no.2 applicant and directed the petitioner to pay Rs.4,000/- per month to O.P.no.2 and Rs.2,000/- per month to her son.

5. Learned counsel for the petitioner has assailed the impugned order on the ground that there is no material available on the record to show that he is driver and without assessment of his income direction has been made to pay total Rs.6,000/- per month to O.P.no.2 and her son and as such the award of maintenance is against the materials available on the record.



Further submission is that the learned Family Court has not considered the materials available on the record that O.P.no.2 is earning from the tuition and tailoring as such she is able to maintain her and her son and without considering the aforesaid fact the order granting maintenance has been passed.

6. Heard learned counsel for O.P.no.2 also, who has defended the impugned order and submitted that the order passed is just and proper and does not require any interference by this Court.

7. Having heard both sides and on perusal of the record, it appears that it is admitted fact that O.P.no.2 is wife of the petitioner and it is also admitted fact that O.P.no.2 is residing in her *maike*. O.P.no.2 has also come with a case that she was ousted from the house and for that she has lodged complaint case and considering the above, it appears that O.P.no.2 has valid reason for residing separately. So far claim of the petitioner that she is earning and she can maintain her and her son is concerned, four witnesses have been examined on behalf of petitioner but none of the witnesses have stated that she has income from tailoring and tuition, as such nothing has been brought on record on behalf of the petitioner rather it is admitted fact that the petitioner is residing in her *maike* and



dependent on her *mai*ke people.

8. So far another submission that the learned Family court has not assessed annual income of the petitioner rather on the rough assessment, he has ordered for awarding of Rs.6,000/- per month in favour of O.P.no.2 and her son. On close scrutiny of the evidence, it appears that O.P.no.2 has come with a case that the petitioner is a truck driver and he has income from dairy also and as such he has income of Rs.15,000/- per month. However, on close scrutiny of evidence it does not appear any sufficient materials available on the record to show income of petitioner and there is also no assessment of income by the learned Family Court. It appears that the learned Family Court has gone on the presumption and ordered for payment of Rs.6,000/- as maintenance to O.P.no.2 and her son, which appears to be excessive. However, being an able bodied person, he may earn Rs.300/- as a labourer per day, he can earn Rs.9,000/- per month out of which O.P.no.2 shall be entitled for 1/3 of the amount.

9. Considering the discussions made above without interfering with the findings that O.P.no.2 is entitled for maintenance amount is reduced to Rs.3,000/- per month to the applicant O.P.no.2 and her son.



10. With the above modification, this application is
disposed of..

(Vinod Kumar Sinha, J)

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