

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.171 of 2016

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

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Om Prakash Mehta @ Om Prakash Mahto son of Late Siya Ram Mahto
resident of Mohalla Budha Colony, New Gandhi Murti, P.O.- G.P.O., P.S.
Budha Colony, District- Patna.

... .. Petitioner/s

Versus

Kalpana Kumari @ Guriya daughter of Shri Om Prakash Mehta and Late
Kiran Devi resident of Budha Colony, Near Gandhi Murti, P.O.- G.P.O., P.S.
Budha Colony, District- Patna. at present resident of Mohalla Chanakya
Nagar, Purani Baithka Near Baba Market, Kumhrar, P.O. Bahadurpur, P.S.-
Agamkuan, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Anjani Kumar
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 22-04-2019 This revision application has been filed against the

order dated 25.11.2015 passed by the learned Additional

Principal Judge, Family Court, Patna, in Maintenance Case No.

4(M) of 2010 directing the petitioner to pay to the opposite

party, who is his daughter from first wife, maintenance amount

of Rs.8000/- per month from the date of filing of the petition

and the litigation cost of Rs.15,000/-.

The aforesaid impugned order has been assailed by

the petitioner on the ground that there is no final income of the

petitioner and without giving any finding of his income, the

assessment of the fixing of quantum of maintenance does not

appear to be proper and consequently on the ground that the



opposite party was directed to pay Rs.8000/- per month from the date of filing of the petition considering the one third of the income of Rs.25,000/-, but in that income, petitioner has six children from the second wife also apart from second wife and as such, the impugned order granting maintenance of Rs.8000/- appears to be excessive. It has also been submitted that now the petitioner has been superannuated from service.

It appears that opposite party is the daughter from his first wife and filed a case for maintenance before the Family Court and in that case claiming herself to be the daughter of the petitioner and also claiming that she is not allowed to live with the petitioner and she is residing with her maternal uncle and there is no source of her income and she is unable to maintain herself in study, fooding and lodging also.

The petitioner has appeared in the maintenance case and challenged the story of the opposite party that she is daughter of the petitioner on various grounds.

Both the parties have adduced evidences and also filed several documents.

Considering the documents available on record, the learned court below has come to a finding that the opposite party is the daughter of the petitioner and she is unable to



maintain herself. It further appears from the evidence that the learned Family Court has also considered the income of the petitioner and allowed Rs. 8000/- per month to the opposite party. So far contention of learned counsel of the petitioner is that there is no finding with respect to the monthly income of the petitioner and without assessing monthly income allowing Rs.8000/- per month to the opposite party does not appear to just and proper.

On the other hand, learned counsel for the opposite party has submitted that the evidence has been brought on behalf of opposite party that petitioner has an income of 40,000/- per month and he is earning Rs.40,000/- from rent of one building and on the other hand, the opposite party has no source of income.

From perusal of the record, though some evidences have been brought on behalf of opposite party with regard to the income of Rs.40,000/- per month from salary and also from rent, but the learned court below has considered the income and only considering the admitted fact that the petitioner was getting Rs.25,000/- per month, he has allowed Rs.8000/- per month to the opposite party on the basis of one third income to be granted as maintenance. It further appears that the learned Family Court



has also failed to consider its aspect of the matter that the petitioner has second wife and six children also and without considering the same, he has decided the maintenance on the principle of one third amount as maintenance.

In view of the above facts and circumstances and affirming the finding of Family Court that the opposite party no.2 who is the daughter of the petitioner and secondly she is entitled for maintenance, so far the quantum of maintenance is concerned, to my opinion, the learned Family Court ought to have given a finding of annual income or monthly income and considering both the annual salary and monthly salary at that time as well as from the rent of the house and considering the same, he ought to have decided the monthly income of the petitioner and further the learned Family Court shall also consider the liability of the petitioner and pass the award of maintenance amount to the opposite party.

In such view of the matter, so far quantum of maintenance is concerned, that part of impugned order is set-aside with respect to the same and the matter is remitted back to the court below to give a finding on the assessment of the annual income/ monthly income of the petitioner, if necessary, after adducing the evidence on behalf of both the parties and



thereafter to pass an appropriate order on quantum of maintenance.

It is needless to say that both the parties have to cooperate in the case and the matter be decided within a period of six weeks.

In the meantime, petitioner shall continue to pay Rs.2000/- per month to the opposite party no.2 as directed by this Court vide order dated 16.03.2018.

With the above observation, this application is disposed of.

(Vinod Kumar Sinha, J)

Amjad/-

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