

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.315 of 2016

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

Saiyad Mohmmad Sadruddin Son of Late Reyazuddin Ahmad, Resident of Mohalla- Garahitecr, P.S.- Bhagwan Bazar, District- Saran.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Shabnam Bano, Wife of Saiyad Mohammad Sodruddi, Daughter of Saiyed Afzal Imam, Resident of Mohalla- Dahuyawan Near Chhoti Masjid, P.S. Chapra Town, District- Saran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Digvijay Pratap Singh, Adv.
For the Respondent/s	:	Mr.Anil Kumar, APP
For O.P. No. 2	:	Mr. Rajesh Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

4 03-05-2019 This revision application has been preferred against the order dated 30.01.2016 passed by the learned Principal Judge, Family Court, Saran at Chapra in Maintenance Case No. 08 of 2009, whereby, the learned Principal Judge, Family Court has awarded Rs. 8,000/- to the opposite party no. 2 as maintenance to be paid by the petitioner.

Case in short is that marriage of petitioner was solemnized on 25.03.1998 as per the muslim rights and customs. However, after some time petitioner and his family members started demanding motorcycle and other articles and due to non fulfillment of the demand, she was assaulted and subjected to torture and harassment and was ousted from the



house, for that, opposite party no. 2 lodged a case against the petitioner under Sections 323,379, 498(A) of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act. Subsequently, the said case was compromised and the petitioner promised that he will not make any torture, on which, opposite party no. 2 went to her matrimonial house, where she lived for three days but again petitioner started assaulting her and she was again ousted from the house. It further appears that thereafter the opposite party no. 2 filed the maintenance case in the Family Court, Saran at Chapra.

In the said maintenance case, petitioner – opposite party no. 2 appeared in the said maintenance case before the Family Court, Saran at Chapra and filed his show cause stating that the ground for maintenance is false and fabricated and the opposite party no. 2 (herein petitioner) is bearing the cost of education of one of the daughters and another daughter was forcibly taken away by the petitioner (herein opposite party no. 2). He is a retired handicapped person and he has no other source of income except pension and he also has to maintain his family as well as two sisters, whereas, opposite party no. 2 is skilled in sewing and stitching and is a trained beautician.

During the proceeding, witnesses were examined on



behalf of the parties and, thereafter, learned Principal Judge, Family Court, Saran at Chapra after considering the evidence available on record found the opposite party no. 2 legally wedded wife of the petitioner and further found that she has been deserted by the petitioner and she has no independent source of income. Learned Principal Judge, Family Court, Saran at Chapra also after considering the materials available on record came to conclusion that petitioner's monthly income is more than Rs. 14,000/- (Rs. Fourteen Thousand) and, hence, awarded Rs. 8,000/- (Rs. Eight Thousand) per month to opposite party no. 2 -applicant.

Being aggrieved by the same, the petitioner moved this Court in the instant revision application challenging the finding arrived at by the learned Principal Judge, Family Court, Saran at Chapra as also the quantum of maintenance. However, learned counsel for the petitioner confined his argument with regard to quantum of maintenance and submitted that his monthly income has been assessed as Rs. 14,000/- (Rs. Fourteen Thousand), out of which, he also has to take care of one of the daughters and his family members including two sisters, however, without considering these facts, the learned Principal Judge, Family Court, Saran at Chapra has awarded Rs. 8,000/-



(Rs. Eight Thousand) per month as maintenance, which is more than half of his monthly income, which is very excessive and not sustainable in the eye of law.

Learned counsel appearing on behalf of opposite party no. 2 defended the order passed by the learned Principal Judge, Family Court, Saran at Chapra and submitted that the opposite party no. 2 is the legally wedded wife of the petitioner and she is also looking after the education as well as other expenditures of one of the daughters and considering the same, learned Principal Judge, Family Court, Saran at Chapra has awarded Rs. 8,000/- (Rs. Eight Thousand) per month as maintenance to opposite party no. 2, which is just and proper.

Having heard both sides, on consideration of materials available on record, it appears that learned Principal Judge, Family Court, Saran at Chapra has come to conclusion that petitioner has a monthly income of Rs. 14,000/- (Rs. Fourteen Thousand) from his pension and considering that he has awarded Rs. 8,000/- (Rs. Eight Thousand) per month as maintenance to opposite party no. 2. However, it appears that learned Principal Judge, Family Court, Saran at Chapra has failed to consider that petitioner has only income of Rs. 14,000/- (Rs. Fourteen Thousand) per month out of which, he also has



to look after his family members including two sister and also a daughter and her education and in such a situation, opposite party no. 2 being the wife of petitioner will be entitled only to 1/3rd of monthly of petitioner, which comes to around Rs. 5,000/- (Rs. Five Thousand) per month, as such, the impugned order with regard to quantum of maintenance does not appear to be sustainable.

Accordingly, the order dated 30.01.2016 passed by the learned Principal Judge, Family Court, Saran at Chapra in Maintenance Case No. 08 of 2009 is modified to the extent that petitioner is directed to pay Rs. 5,000/- (Rs. Five Thousand) to opposite party no. 2 for her maintenance as well as the maintenance of her daughter.

With the above modification in quantum of maintenance, this application is partly allowed.

(Vinod Kumar Sinha, J)

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