

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.422 of 2016

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

Ashok Kumar Kashyap son of Sardar Yadav resident of village Deokund House, Rmbagh situated in Shivala Road, P.S.Deo District Aurangabad.

... .. Petitioner/s

Versus

1. State Of Bihar

2. Meena Devi w/o Ashok Kumar Kashyap and D/O Suryadeo Yadav, resident of village Deokund House, Rambagh situated in Shivala Road, P.S. Deo District Aurangabad.

At present resident of vilalge Ora P.O. Kanbehri, P.S.Muffasil, District Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Krishna Pd. Singh, Sr. Adv.

Mr. Saket Kumar Singh,

For the Respondent/s : Mr.Pushpa Sinha

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

7 16-05-2019 This revision application has been filed by the husband, who is O.P.no.2 in the maintenance case, against the order dated 2.3.2016 passed by the Principal Judge, Family Court, Aurangabad in an application filed under Section 125 of the Cr.P.C. by the applicant/O.P.no.2 in Misc. Case No.1215 of 2010, whereby and whereunder the petitioner is directed to pay Rs.4,000/- per month after adjusting Rs.1,600/- per month as per earlier order of the Hon'ble High Court.

Submission of the learned counsel for the petitioner is that there is no assessment of the monthly income or annual income of the petitioner and without assessment, the order for



payment of Rs.4,000/- was passed by the learned Family Court, which itself is against the materials available on the record.

In this case, notice was issued to the O.P.no.2 but it appears that O.P.no.2 in spite of notice being validly served has not appeared nor any person on behalf of O.P.no.2 has appeared as such this Court has directed vide order dated 9.5.2019 that if nobody appears on behalf of O.P.no.2 this case will be heard and *ex parte* order will be passed.

On perusal of the record it appears that though the case of the applicant/O.P.no.2 is that the petitioner earns Rs.1,50,000/- per annum and he also earns Rs.25,000/- per month from his house and the O.P.no.2 has sought for Rs.10,000/- as maintenance whereas the petitioner has filed a reply; in which he has admitted that he was working as Lab Technician in the Health Department and earns Rs.5,000/- per month on contract basis. It further appears that the A.W.3 has examined herself in this case and stated that her husband earns Rs.50,000/- per month as salary and he was also having agricultural land and two houses but she has further admitted that there is no agricultural land of her husband and there is no partition between the brothers of the husband and his father. Similar evidence of A.W. 4 also discloses that he has not seen



document of agricultural land and he do not know that the petitioner has job on contract basis or he is permanent employee whereas the petitioner was examined as O.P.W.1 and he has stated on oath that he is an unemployed person and his father has only two bighas of land but he has admitted that he is Lab Technician in the Health Department and he earns Rs.5,000/- per month . O.P.W.2 has also stated that the petitioner has lost his job and he has also denied that he has building at Beur and he earns Rs.5,000/- per month. It appears that though there are some evidence available on the record but without considering the materials with respect to annual income or monthly income of the petitioner, the learned court below has awarded Rs.4,000/- per month to the applicant/ O.P.no.2.

In such view of the matter, to my opinion, the impugned order with respect to question of maintenance, can not be sustained. Accordingly, this revision application is allowed and the matter is remitted back on the limited point to hear both the parties and after assessment of annual/monthly income, will award the maintenance..

The aforesaid proceeding must be concluded within a period of nine months and both the parties have to co-operate in that.



It is needless to say that the petitioner shall continue to pay Rs.1,600/- per month, which has already been directed by this Court earlier.

Accordingly, this revision application is partially allowed.

(Vinod Kumar Sinha, J)

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