

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.239 of 2016

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

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Anamika, wife of Rajeev Kumar, daughter of Ajay Kumar, resident of Moh. Mithanpura, Durga Mandir, P.S. Mithanpura, Dist. Muzaffarpur, at present with father Ajay Kumar, Moh. Gobarsahi, Majhauli, North front of M.P.S. Science College, P.S. Sadar, Dist. Muzaffarpur

... .. Petitioner

Versus

1. The State of Bihar
2. Rajeev Kumar, son of Ashok Kumar Tiwari, resident of Moh. Mithanpura Near Durga Mandir, P.S. Mithanpura, Dist. Muzaffarpur

... .. Opp. Parties

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Appearance :

For the Petitioner/s	:	Mr.Sanjay Parasmani, Advocate
For the O.P. No.2	:	Mr. Laxmi Narayan Das, Advocate
For the State	:	Mr. Suresh Prasad Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

12 02-09-2019 This revision application has been filed by petitioner-applicant against the order dated 21.12.2015 passed by learned Principal Judge, Family Court, Muzaffarpur in Maintenance Case No. 215 of 2013 whereby and whereunder the court has dropped the maintenance case filed by the petitioner.

The fact, in short, is that petitioner has filed a maintenance case before the Family Court, Muzaffarpur for grant of maintenance of Rs.50,000/-.

Opposite party No.2-husband has appeared and contested the claim of the petitioner. It further appears that



four witnesses have been examined on behalf of petitioner and three witnesses have been examined on behalf of opposite party No.2 and it further appears from perusal of the record that in the meantime opposite party No.2 has filed an application under Section 13 of the Hindu Marriage Act for decree of divorce against the petitioner which was numbered as Matrimonial Case No. 163 of 2010.

It also appears that Matrimonial Case No. 163 of 2010 has been allowed in favour of opposite party No.2-husband, which will appear from Annexure-A to the counter affidavit filed on behalf of opposite party No.2 and last portion of the judgment disclosed that permanent alimony of Rs.13 lac was allowed in favour of the petitioner along with arrears of maintenance amount. It further appears from perusal of the record that learned Family Court considering the fact that permanent alimony has been allowed and arrears of maintenance has also been given to the petitioner, dropped the proceeding under Section 125 Cr.P.C. vide order dated 21.12.2015.

The petitioner has assailed the aforesaid order on the ground that once the petitioner filed an application



under Section 125 Cr.P.C. for grant of maintenance and evidence has been adduced on behalf of both the parties, the proceeding cannot be dropped by passing a cryptic order as even on divorce maintenance can be granted if alimony is not sufficient to maintain herself and her child and learned Family Court without considering the aforesaid aspect of the matter disposed of the application by passing a cryptic order. Further submission of learned counsel for petitioner is that the maintenance case has been dropped by learned Family Court without any finding that whether the alimony is sufficient for her and her child for maintenance.

It has further been submitted by learned counsel for the petitioner that against the decree passed in Matrimonial Case No. 163 of 2010 a Misc. Case has been filed, which was dismissed for non-prosecution but he has filed an application for restoration of the same, which is numbered as MJC 2931 of 2019 and is still pending.

On the other hand, learned counsel for opposite party No.2 has opposed this application stating that permanent alimony has already been granted to the petitioner of Rs.13 lac along with arrears of maintenance



amount and that amount has already been deposited through Demand Draft before the Family Court and as such there is no illegality and impropriety in dropping the proceeding under Section 125 Cr.P.C.

Having heard both sides, to my opinion, the proceeding under Section 125 Cr.P.C. and proceeding under Section 13 of Hindu Marriage Act are two different proceeding and learned Family Court ought to have considered this aspect of the matter as to whether a permanent alimony is sufficient for maintenance of her and her child but without any finding to that effect, dropping the proceeding under Section 125 Cr.P.C. vide the impugned order suffers from illegality, which cannot be sustained in the eye of law.

In view of above facts and circumstances, the order dated 21.12.2015 is set aside and the matter is remitted back to learned Family Court to consider afresh on the basis of materials available on the record and also taking into consideration the amount of permanent alimony and dues of arrears of maintenance passed by Family Court vide the judgment passed in Matrimonial Case No. 163 of 2010



and pass an appropriate.

This application is, accordingly, allowed to the extent indicated above.

(Vinod Kumar Sinha, J)

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