

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.84 of 2016

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

Narendra Mohan Pd. Singh @ Munna, son of Akhilesh Prasad Singh,
Resident of village- Kabauli Ram, P.S.- Bangra, District- Samastipur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sadhana Devi W/o Narendra Mohan Pd. Singh @ Munna, r/o village- Kabauli Ram, P.S.- Bangra, District- Samastipur
3. Vijay Laxmi @ Moti minor S/o Narendra Mohan Pd. Singh @ Munna, under the guardianship of petitioner no. 2 r/o village- Kabauli Ram, P.S.- Bangra, District- Samastipur. At presently residing at vill.- Peerapur, P.S.- Jandaha, District- Vaishali

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Anish Chandra

For the Respondent/s : Mr.P.K. Chourasiya App

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date : 09-04-2019

This application has been filed against the impugned order dated 10.09.2015 passed by the Principal Judge, Family Court, Samastipur in Misc. Case No. 157 of 2008 by which petitioner was directed to pay maintenance allowance of Rs. 6000/- per month to the O.P.No. 2 and Rs. 5,000/- per month to O.P.No. 3.

2. It appears from perusal of record that earlier O.P.No. 2 has filed Maintenance Case No. 157 of 2008 stating that she was married with the petitioner, who demanded Rs. 50,000/- and sold her ornaments for purchase of tractor. Further case is that petitioner-husband used to assault her for which a complaint case was filed by O.P.No. 2-applicant under Section 498A of the Indian Penal Code against the petitioner. Her further case is that out of



their wedlock, one daughter was borne, however husband demanded Rs. 50,000/- for purchasing a Bolero vehicle, which could not be fulfilled by her and ornaments of O.P.No. 2-applicant were also sold by her husband for purchasing tractor and he was in habit of assaulting her leading to abortion of a child in womb and lastly, she was ousted from house.

3. Further case is that her husband has 11 Bighas of land and presently, monthly income of her husband is not less than Rs 25,000/- and as such she has demanded Rs. 10,000/- per month for maintenance of herself and her daughter.

4. It appears that O.P.No. 2-petitioner did not turn up to contest the above maintenance case and the case was fixed for *ex party* hearing. The Principal Judge, Family Court, vide order dated 19.05.2009, allowed the maintenance case and directed the O.P.No. 2 to pay Rs 5000/- per month as well as daughter from the 1st January, 2009 for their maintenance.

5. The record further shows that against the aforesaid order dated 19.05.2009 passed by the Family Court, the petitioner-husband has preferred Cr.Rev. No. 1085 of 2009 challenging the *ex parte* order and the aforesaid revision was disposed of vide order dated 08.11.2012 with liberty to the petitioner to file petition before the Family Court, which will be also heard and decided in accordance with law only after giving opportunity of hearing to all



concerned.

6. The record further shows that thereafter petitioner-husband has preferred Misc. Case No. 157 of 2008 and the learned Family Court, vide order dated 10.09.2015, directed the petitioner to pay maintenance allowance of Rs 6000/- per month to O.P.No. 2 and Rs 5000/- to O.P.No. 3.

7. Being aggrieved by the above order, the present revision application has been preferred on the ground that earlier Rs 5000/- was allowed as maintenance in favour of O.P.Nos. 2 and 3, however, vide impugned order, the petitioner was directed to pay Rs 6000/- to the O.P.No. 2 and Rs 5000/- to O.P.No. 3 and without considering the fact that O.P.No. 3 is now married daughter of O.P.No. 2 and as such O.P.No. 3 is not entitled for maintenance allowance under Section 125 Cr.P.C.. Further ground for assailing the impugned order is that though the quantum of maintenance has been fixed but there is no assessment on the annual income of the petitioner and without giving any finding on the annual income of the petitioner, present impugned order has been passed which is not sustainable in the eye of law.

8. O.P.No. 2 has appeared, however, no material could be brought to the notice of this Court showing that annual income was assessed and without assessment and finding on the annual income of the petitioner, impugned order has been passed granting



Rs 6000/- per month to the O.P.No. 2 and Rs. 5000/- per month to O.P. No. 3. The only material that is available on record is that petitioner has 11 Bighas of land and one lichi garden, but as to how much income he is deriving from the same is not available on record. For deciding the quantum of maintenance, the Family Court ought to have assessed annual income of the petitioner and in absence of that the impugned order does not appear to be sustainable.

9. In view of the above facts, impugned order dated 10.09.2015 passed by the Principal Judge, Family Court, Samastipur in Misc. Case No. 157 of 2008 is hereby set aside and the matter is remitted back to the Principal Judge, Family Court, Samastipur to assess the annual income of the petitioner after hearing both parties if necessary giving opportunity to them to lead evidence on that point before passing any order of maintenance. Considering the above, application for maintenance shall be disposed of within a period of nine months from the date of receipt of a copy of this judgment. Needless to say, both the parties have to co-operate in disposal of the same.

10. The learned Family Court shall also consider the submission of learned counsel for the petitioner that O.P.No. 3 is now married and as such she is not entitled for maintenance.

11. In the meantime, petitioner is directed to pay Rs 3000/-



per month to O.P.No. 2 in the second week of every month, as directed vide order dated 13.03.2018 and on failure to pay the maintenance amount, O.P.No. 2 shall have liberty to move for realisation of the same through the process of court.

12. With the aforesaid observation and direction, this application is allowed.

(Vinod Kumar Sinha, J)

sujit/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

