

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.639 of 2016

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

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Shri Ram Singh, son of Late Ramchandra Singh, resident of village - Deulia,
P.S. Kateya, District - Gopalganj

... .. Petitioner

Versus

1. The State of Bihar
2. Smt. Shakuntala Devi, wife of Shri Ram Singh, resident of village - Ramdas Bagahi, P.S. Kateya, District - Gopalganj

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Ashish Giri with Mr. Rajat Kumar Tiwary, Advocates
For the State	:	Mr.Anil Kumar, APP
For Opposite Party No.2	:	Mr. Pankaj Kumar Dubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

6 17-01-2019 This revision application is directed against the order dated 10.6.2016 passed by learned Principal Judge, Family Court, Gopalganj in Maintenance Case No. 121 of 2009 by which the application filed by opposite party No.2 for maintenance under Section 125 Cr.P.C. has been allowed and maintenance of Rs.4000/- per month in favour of opposite party No.2 and Rs.2000/- each for her two daughters per month has been fixed with effect from the date of filing of the case, i.e., from 28.8.2009.

The case, in short, is that opposite party No.2, who is applicant in the maintenance case, has filed a maintenance case stating before the Family Court, Gopalganj that she was married with with the petitioner in the year 2002 according to Hindu rites and customs and from their wedlock two daughters were born and further



case is that thereafter petitioner demanded a Bajaj Motorcycle and Rs.1.5 lakh from her parents, which they unable to pay and further the petitioner had kept a Kinnar in his house and applicant protested and for that she was assaulted and ousted from the house on 18.7.2007 and since then she is residing in her maik with her parents and in spite of intervention of well wishers the petitioner did not go to take her back to his house and she is residing in her maik having no source of income and petitioner has also not paid any maintenance to her. Further case of applicant-opposite party No.2 is that she is at the verge of starvation having no job, whereas petitioner-husband is a village Doctor and his daily income is Rs.1000/- besides that he has four bighas of land from which he has annual income of Rs.3,00,000/- but in spite of that he is neglecting her and her children and on the basis of the aforesaid averments she claimed maintenance of Rs.10,000/- per month for herself and for her two minor daughters.

Petitioner-husband has appeared in the maintenance case and filed his written statement denying all the averments made by the applicant in the maintenance case and also denying that he is a medical practitioner having four bighas of land and further case of petitioner-husband is that the applicant-opposite party No.2 is a dolt and indisciplined lady used to quarrel with his family members and for that he has filed a suit for divorce against the applicant-opposite party No.2 being Matrimonial Case No. 56 of 2007, which is pending in the court.



Before learned Family Court three witnesses have been examined on behalf of applicant-opposite party No.2 in support of her case regarding factum of marriage, torture and also on the point of income. On behalf of petitioner-husband also two witnesses have been examined denying the case of applicant and stated that behaviour of the applicant was not good and also on the point that he is not a medical practitioner nor he is a doctor and admitted the factum of marriage having two daughters. He has also admitted that he has only two bighas of land.

Learned Family Court after considering the evidence available on record allowed the maintenance case directing the petitioner to pay Rs.4000/- to opposite party No.2 and Rs.2000/- each to her daughters.

Being aggrieved by the aforesaid order the present revision application has been filed and the ground of assailing the impugned order is that learned Family Court without ascertaining income of the petitioner has passed the order and also without ascertaining income of opposite party No.2 as there is nothing available on record to show that he is a medical practitioner and there is also no finding regarding income.

Heard learned counsel for opposite party No.2, who has opposed the revision application on the ground that the impugned order is just and proper and does not require any interference and further submitted that in spite of the order impugned up-til-now no



maintenance amount has been given to opposite party No.2.

Having heard both sides and on perusal of the record it appears that so far the factum of marriage is concerned, that has not been denied by the petitioner and he has also admitted that he has two daughters and so far income of opposite party No.2 is concerned, no material was available on record and there is no evidence on that point. It further appears that a divorce case has been filed by the petitioner which supports the claim of opposite party No.2 that she was deserted and so far allowing of maintenance case is concerned, there is nothing illegal in it. However, so far quantum of maintenance amount is concerned, learned Family Court has allowed Rs.4000/- to opposite party No.2 and Rs.2000/- each to two daughters but on perusal of the record it appears that learned Family Court has not ascertained what is the income of the petitioner and without ascertaining the income he has passed the order allowing the maintenance amount which does not appear to be sustainable.

In the facts and circumstances, as stated above, so far impugned order regarding allowing maintenance is concerned, the same is affirmed but so far quantum of maintenance amount is concerned, the matter is remitted back to the Family Court, Gopalganj to come to a finding so far income of the petitioner after taking evidence, if necessary, and pass an order on the quantum of maintenance amount within a period of six months from the receipt of order, which will be applicable from the date of filing of the



application.

In the meantime, petitioner shall pay Rs.5000/- per month to opposite party No.2 for her maintenance and for maintenance of her two daughters by second week of each month and on failure to pay the same or if any amount is due earlier the opposite party No.2 is at liberty to move before the Family Court for taking appropriate action for recovery of the same.

With the above observation, this application is disposed of.

(Vinod Kumar Sinha, J)

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