

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.627 of 2016

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

=====

Ashish Jha son of Bhav Nath Jha resident of Quarter No.O-119,Delta-3, Greater Noida, District-Janpath Gautambudh Nagar (U.P)

... .. Petitioner

Versus

1. The State of Bihar
2. Reena Jha wife of Ashish Jha , D/o Amarendra Jha R/o village - Protapganj (Adarsh Nagar), P.O+P.S.pratapganj District-Supaul

... .. Respondents

=====

Appearance :

For the Petitioner/s : Mr.Shailendra Kumar Singh, Advocate
For the Respondent/s : Mr.Durga Nand Jha, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

7 17-01-2019 This revision application has been filed on behalf of the petitioner, who is husband of respondent No.2-wife, against the order 16.1.2015 passed in Maintenance Case No. 87 of 2010 by which learned Principal Judge, Family Court, Supaul has directed to the petitioner to pay Rs.6000/- to his wife-respondent No.2 and Rs. 6000/- to his daughter, altogether Rs.12,000/- per month as maintenance amount.

At the very outset, an objection has been raised by learned counsel for respondent No.2 that this application has been filed beyond the limitation period. However, since both the parties are appearing it is better to hear the matter and dispose it of at the admission stage itself and as such the limitation is condoned.



Case of respondent No.2-wife, in short, is that she was married with the petitioner in the year 2006 and thereafter she was residing with the petitioner. Thereafter she was subjected to mental and physical cruelty and thereafter compromise has been arrived at between the parties and as such she again went to her sasural where she was again subjected to cruelty and she went back to her maike in April, 2007 where she gave birth to a child on 23.9.2007. Further case is that her husband-petitioner came to her maike and threatened her and her husband was working as Accountant in the Bhilwara Group of Company and getting salary of Rs.25,000/- and her father-in-law was Chief General Manager, Dhampur Sugar mill and her brother-in-law (Debar) was doing his business. It is also her case that in her sasural she was unable to maintain herself and her child and so there was requirement of Rs.16,000/-, Rs.8000/- for herself and Rs.8000/- for her daughter as maintenance.

It further appears that husband-petitioner has appeared on 19.7.2011 but till 28.2.2012 he has not filed written statement and as such he was exempted for filing written statement. It further appears that three witnesses have been examined on behalf of respondent No.2-wife and a decision of Allahabad High Court has also been brought on record as Ext.1 and other



papers have also been brought on record as Exts. 2 and 3. The witnesses have not been cross examined by the petitioner-husband. Learned Family Court after considering the evidence available on record has come to a conclusion that petitioner is the husband of respondent No.2 and he was working in Bhilwara Group of Company and drawing a handsome salary and respondent No.2-wife has no source of income to maintain herself and considering the same the learned Family Court has directed the petitioner-husband to pay Rs.6000/- to his wife and Rs.6000/- to his daughter, altogether Rs.12,000/- in each month in between 1-10 of each month.

Being aggrieved by the same, the present revision application has been preferred by the petitioner-husband on the ground that wife was a student at Gorakhpur and as such the matrimonial case has been transferred from Noida to Gorakhpur and as such no cause of action arises at Supaul for giving maintenance amount as he left the job and lastly on the ground that if it is believed that petitioner is getting Rs.25,000/- per month the maintenance amount granted to respondent No.2-wife and his daughter is excessive as 50% of the amount has been granted as maintenance.

On the other hand, learned counsel for respondent



No.2 has opposed the revision application on the ground that petitioner was admittedly working in Bhiilwara Group of Company and was getting Rs.25,000/- per month as salary, apart from that her father-in-law was working as Chief General Manager in Dhampur Sugar Mill and considering the same the amount of maintenance has been decided and in spite of opportunity being given to the petitioner, he had not denied the income in the written statement but he did not file written statement before the Family Court. Further submission is that no objection has been raised before the Family Court about the jurisdiction of the court and as such it is not open to the petitioner to raise the issue of income at this stage. Further submission is that respondent-wife and her daughter are entitled to live as per status of the petitioner and as such the amount does not appear to be excessive.

Having heard both sides and on perusal of the record it appears that it is admitted position that petitioner is the husband of respondent No.2 and there is specific case of respondent No.2 that petitioner was earning Rs.25,000/- per month and in spite of opportunity given to him to deny the same he did not file written statement denying the income. No doubt, respondent No.2 has come with a case that her father-in-law was



also Chief General Manager but the same cannot be clubbed in the income of petitioner and there is no chit of paper to show that petitioner has own income and there is nothing available on record to show that respondent No.2-wife has deserted him. No doubt, petitioner-husband has come with a case that the amount of maintenance is excessive as now he is not in job but impugned order has been passed considering the income of the petitioner of Rs.25,000/- per month and respondent-wife is also entitled to live as per status of her husband-petitioner and considering the same respondent No.2-wife and her daughter were granted maintenance of Rs.16,000/- per month.

Considering the aforesaid aspects of the matter, I find no illegality in the impugned order granting maintenance passed by learned Family Court. However, considering the above discussions, the amount of maintenance appears to be excessive, as such is reduced to an amount of Rs.5000/- to the wife-respondent and Rs.3000/- to the daughter, altogether Rs.8000/- per month which will be payable from the date of application. Petitioner is also directed to pay the arrear of maintenance amount within a period of six months in three instalments and he will continue to pay the current maintenance amount by 15th of each month and if he fails to do so, respondent-wife is at



liberty to move before the Family Court for appropriate action.
Similarly, it is open to the petitioner to move before Family Court if he desires may file a petition under Section 127(1) of Cr.P.C. showing that he has no income now.

With the above observation, this revision application is dismissed.

(Vinod Kumar Sinha, J)

spal/-

U		T	
---	--	---	--

