IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.50 of 2018

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

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Md. Rauf @ Abdur Rauf S/o Md. Hussaini, R/o Village- Churaili, P.S.- Banka, District- Banka.

... ... Petitioner/s

Versus

1. Bibi Sahina W/o Md. Rauf and D/o Md. Nezam,
2. Md. Daut S/o Md. Rauf
Both are R/o Village- Karihara, Post- Haripar, P.S. and District- Banka.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Ranjan Kumar Jha with
Mr. Subhash Kumar Jha, Advocates

For the Opposite Parties : Mr. Brijnandan Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 12-07-2019

Heard learned counsel for the petitioner and learned counsel for the opposite parties.

2. The petitioner has moved the Court against the order dated 16.09.2017 passed in Miscellaneous Case No. 110 of 2014/Trial No. 63 of 2017 passed by the Principal Judge, Family Court, Banka by which the application filed by the opposite parties for maintenance under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') has been allowed and the petitioner has been directed to pay Rs. 2,000/- per month to the opposite party no. 1, who is his wife and Rs. 1,000/- per month to the opposite party no. 2, who is his son.

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3. Learned counsel for the petitioner submitted that as per the provision of Section 125 (4) of the Code, the opposite party no. 1 is not entitled to receive any maintenance as she has refused to live with her husband and they are living separately by mutual consent. It was submitted that as per the agreement between the parties, the petitioner is living with his three children whereas the opposite party no. 1 is living with the youngest, and, thus, she is debarred from seeking maintenance under Section 125 of the Code from the petitioner. It was further submitted that the Court below while quantifying the amount has gone by the yardstick that the petitioner earns Rs. 300/- per day and, thus, in a month earns Rs. 9,000/- and, accordingly Rs. 3,000/- in total has been fixed as monthly maintenance in favour of the opposite parties. It was submitted that the petitioner works as a salesman in a fish shop and the owner of the fish shop has deposed before the Court below that the shop is closed on every Tuesday and Thursday. It was, thus, submitted that going by the same yardstick the quantification of the amount is erroneous and requires interference.

4. Learned counsel for the opposite parties submitted that there is no agreement between the parties to live separately and the opposite parties were forced to leave the matrimonial home due to the conduct of the petitioner. It was submitted that the

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opposite party no. 2, being an infant, the opposite party no. 1 had brought him with her so as to take care of him otherwise there were serious apprehensions of him not being taken care of. It was submitted that the petitioner being the husband is responsible for welfare as well as the maintenance and upkeep of the opposite parties and just because the petitioner has ousted the opposite parties from the matrimonial home would not lead to the presumption that they have themselves deserted or denied to live with the petitioner. It was further contended that nothing has been brought on record during the entire trial with regard to any agreement which the petitioner claims pursuant to which the parties were living separately.

5. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application. Besides agreeing with the submissions of learned counsel for the opposite parties, the Court would only observe that such type of oral stand before the Court below with regard to there being an agreement of separation pursuant to which the parties were living separately is totally not worth believing, muchless in the eyes of law where substantive proof is required. Just because factually the parties are living separately, that too, as is well explained, the reason being

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that the opposite parties have been ousted from the matrimonial home, would definitely not lead to any such presumption of there being mutual agreement for living separately. This, coupled with the fact that even if it is presumed, for the sake of argument, that the shop in which the petitioner works is closed every Tuesday and Thursday, nothing precludes the petitioner from working on those closed days somewhere else for earning. If he has the liability he has to bear the same and cannot take a stand that he would not work and earn. This privilege is not available to a person who has liability of providing support to four children and a wife. Moreover, the amount of Rs. 3000/- per month is most reasonable, both on facts as well as in law and in any view of the matter cannot be said to be either excessive or arbitrary, being based on sound logic.

6. For reasons aforesaid, the application is dismissed.

(Ahsanuddin Amanullah, J)

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