

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1672 of 2018

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Pankaj Shashi S/o Mahendra Sah, R/o Ramgarh Cant, In front of Ishar Petrol Pump, Pratap Nagar Nai Saray P.S. and District- Ramgarh Jharkhand.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Kanchan Kumari D/o Hira Lal Prasad, W/o Pankaj Shashi, At present Residing at Gola Road, Nokha Near Primary Health Centre, P.S. Post - Nokha, District- Rohtas.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Jitendra Prasad Singh
For the Opposite Party/s : Mr.Sri Bharat Bhushan

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
C.A.V. JUDGMENT

Date : 25-09-2019

Heard learned counsels for the parties.

Petitioner, by means of this application under section 482 of the Code of Criminal Procedure, has invoked the inherent jurisdiction of this Court with prayer to quash the order dated 29.08.2017 passed by the learned Principal Judge, Family Court, Rohtas in Maintenance Case No. 148 of 2016, whereby and whereunder the prayer of the opposite



party no. 2 for grant of interim maintenance has been allowed and the petitioner has been directed to pay Rs. 3000/- per month to the opposite party no. 2 as interim maintenance.

Learned counsel appearing for the petitioner submits that petitioner being the husband is still ready to keep the opposite party no. 2 with full honour and dignity. The opposite party no. 2 has never been neglected by this petitioner. As a matter of fact, for restitution of the conjugal life, petitioner filed Matrimonial Suit No. 136 of 2016 before the Family Court but despite service of notice the opposite party no. 2 is not appearing in the said case nor she is ready to live with this petitioner. No case under section 125 Cr.P.C. is made out against this petitioner. It is further submitted that in view of the aforesaid facts, question of interim maintenance does not arise, and as such, the order impugned is fit to be quashed.

Learned counsel appearing for the opposite party no. 2 submits that opposite party no. 2, who is a housewife, is living with her father as petitioner has expelled her from his house. She is unemployed and is in acute financial need to contest the case and also to meet out the day to day



expenses in order to maintain herself. It is also submitted that marriage between the parties is admitted. In the year 2012, the father of the appellant by paying about 2.5-3 lakhs made the opposite party no. 2 do B.Ed course. Further, while the opposite party no. 2 was ill, the father of the appellant got her treated by different Doctors at different Hospitals at Ramgarh, Ranchi, Kolkata, Varanasi and Delhi. It is further submitted that the appellant is an ITI trained personnel.

In the aforesaid background, it is submitted that the Court below has rightly granted interim maintenance of Rs. 3000/- per month to her and the same does not call for any interference.

Learned Addl. P.P. appearing for the State has drawn the attention of the Court to the fact that the present quashing application has been preferred for setting aside the order passed by the learned Court below directing the petitioner to make payment of interim maintenance of Rs. 3,000/- per month under section 125 of the Code of Criminal Procedure to the respondent, however in view of the ratio laid down in the case of ***Md. Akil Ahmad Vs. The State of Bihar and Anr***, reported in ***2016(4) PLJR 968***, this quashing application is not maintainable, rather a Civil Miscellaneous



Application under Article 227 of the Constitution of India should have been filed.

Considering the submissions advanced on behalf of the parties, the materials available on records, this Court is in agreement with the submissions of the learned counsel appearing for the opposite party no. 2.

Petitioner is an I.T.I. passed man and he must be earning a good package. At worst, he must be earning the minimum wages i.e. Rs. 300/- per day which comes to Rs. 9000/- per month, whereas only Rs. 3000/- has been awarded as interim maintenance, which by no stretch of imagination can be said to be excessive.

In view of the discussions made above, I do not find any error in the order impugned warranting interference of this Court in its extra ordinary jurisdiction under section 482 of the Code of Criminal Procedure. The prayer for quashing the same is, therefore, refused.

The application, accordingly, stands dismissed.

(Arvind Srivastava, J)

mcv/-

AFR/NAFR	NAFR
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