

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.595 of 2016

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Sujit Sah Maharana S/o Ashrfi Sah Maharana Resident of Village
Mansurchak, P.S. Samsa, District Begusarai.

... .. Petitioner/s

Versus

Reena Devi W/o Sujit Sah Maharana Resident of village Mansurchak, P.S.
Samsa, District Begusarai At present D/o Shivjee Sah Resident of Mohalla
Magardahi Ghat P.S. Samastipur District Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Saroj Shandilya
For the Respondent/s : Mr. Ajay Kumar

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

6 16-07-2019 This revision application is directed against order dated 2.3.2016 passed in Maintenance Case No.45 of 2011 by the Principal Judge, Family Court, Samastipur, by which he has directed the petitioner to pay Rs.3,000/- per month to O.P.no.2 and Rs.1,000/- to her son from the date of filing of the application.

Facts in short giving rise to this application is that the O.P. no.2 wife has filed maintenance case before the Principal Judge, Family Court, Samastipur stating therein *inter alia* that she was married with the petitioner on 11.7.2007 and after the marriage she gave birth to a son but the behaviour of the petitioner changed towards her and he denied to fulfil the needs of the O.P.no. 2 and in collusion with the family members



started torture and harassment on different ways and further case is that she was ousted by the petitioner on 24.7.2010. O.P.no.2 has also come with a case that the petitioner has income of Rs.15,000/- per month as such she has claimed for Rs.5,000/- per month as maintenance for herself and her son. Petitioner was noticed and he filed a show case admitting that his son born out of the marriage, however, denied the allegation of torture and misbehaviour rather stated that on the instigation of her family members, the present case has been filed. The petitioner has also denied that he has income of Rs.15,000/- rather he has income of Rs.1,400/- per month from selling vegetables and he has also tried to restore conjugal rights but she refused to live with him.

Learned Principal Judge, Family Court, after conclusion of the trial, allowed the maintenance from the date of application filed by O.P.no.2 and the petitioner was directed to pay Rs.3,000/- per month to O.P.no.2 and Rs.1,000/- to her son per month from the date of filing of the petition.

Above impugned order has been assailed by learned counsel for petitioner on the ground that petitioner is ready to keep his wife and he has also filed a petition for restitution of the conjugal right but the learned Family Court has not



considered the same. Further submission is that the income of the petitioner has not been assessed correctly and without assessment, the order for payment of total Rs.4,000/- has been passed in favour of O.P.no.2 (wife) and her son .

On the other hand the learned counsel for the O.P.no.2 has defended the impugned order submitting that there is no illegality in the impugned order, as such this revision application is devoid of merit.

Having heard both sides and on perusal of the record, it appears that the factum of the marriage between the petitioner and O.P.no.2 is admitted. It is also the admitted fact that the O.P.no.2 is residing in her *Maike*. No doubt the petitioner has come with a case for restitution of the conjugal right , however, it further appears that O.P.no.2 has filed a complaint case against the petitioner bearing C.R.No.2074 of 2015 and she has also taken plea of torture and harassment and as such she has valid reason for refusing to live with the petitioner. Now the next question arises whether O.P.no.2 has any source of income. From perusal of the entire record, I find no materials to show that O.P.No.2 has any income to maintain her and to maintain her son. So far income of the petitioner is concerned, Opposite Party No.2-wife has come with a case that petitioner has



earning of Rs.15,000/- per month by selling vegetables, petitioner also admitted that he is selling vegetables but come with a case that he is earning Rs.1,400/- per month that does not appear probable, considering price of vegetables. As such, it appears that the petitioner is suppressing the real income from the court . It is well settled principle that the abled bodied person has to maintain his wife and his son and the learned family court has considered that even a labourer earns Rs.300/- per day , accordingly, monthly income of Rs.9,000/- and considering the same he has fixed the maintenance of Rs.3,000/- per month to O.P.no.2 and Rs.1,000/- to his son per month, as such to my opinion, the aforesaid amount does not appear to be excessive..

Now the question arises as to whether the learned Family Court has justified in directing the payment from the date of application without giving any reason for that. The principle is that at the time of allowing the maintenance from the date of application, the court has to give reason for the same but no reason has been assigned and there is nothing on the record to show that the petitioner is paying any interim maintenance or any amount to the O.P.no.2 during the pendency of this case as such for the ends of justice, I am not inclined to



interfere with the order. As such, this application is devoid of any merit.

Accordingly, this application is dismissed. .

(Vinod Kumar Sinha, J)

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