

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.358 of 2016

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

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Md. Khurshid, son of Late Shaukat, R/o Dih Basadhia, P.S.- Dalasing Sarai,
District- Samastipur at Present Address Gateman Dighwara 8 Number
Railway Gumati Sonapur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Rafat Khatoon, Wife of Md. Khurshid, R/o village- Dih Basariha, P.S.-
Dalasingsarai, District- Samastipur at Present Address Rafat Khatoon, D/o
Md. Rahman @ Rahamat, R/o Kamrawan, P.S.- Dalsingsarai, District-
Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Senior Advocate Mr. Surya Narayan Roy, Advocate Mr. N. Upadhyay, Advocate
For the State	:	Mr. Smt. Anita Kumari Singh, APP
For the O.P. No.2	:	Ms. Aruni Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date : 08-07-2019

1. This revision application is directed against the order dated 16.02.2016 passed by the learned Principal Judge, Family Court, Samastipur in Maintenance Case No.35 of 2008 on the application under Section 125 of Cr.P.C. filed by the opposite party no.2-wife wherein the learned Principal Judge, Family Court, Samastipur has directed him to pay Rs.5000/- per month to the opposite party no.2-wife and Rs.2000/- per month to her son Md. Khalid w.e.f. 01.01.2009 and also directed to pay arrears of maintenance allowance within one year in equal six installments and current monthly allowance by 10th day of succeeding month.



2. The short facts giving rise the present revision application is that petitioner was married with opposite party no.2 on 19.05.1999. After the marriage, the petitioner has started abusing her for payment of Rs.50,000/- (Rupees Fifty Thousand) for business. In June, 1999, the opposite party no.2 came to her parental house and told them about the said demand, but the parents of the opposite party no.2 shows inability. Thereafter, she again went to her matrimonial house, however the petitioner and his family members were treating her like a servant and threatened to marry with another lady and after one year ousted the opposite party no.2 from the house. In the meantime, a male child was also born to her, which is aged about six years. The opposite party no.2, thereafter, filed a maintenance case before the learned Principal Judge, Family Court, Samastipur for allowing the maintenance of Rs.4000/- claiming that petitioner is a railway employee earning Rs.10,000/- per month.

3. Petitioner appeared and filed show cause that the marriage of the petitioner with the opposite party no.2 was a Golawat marriage as they have not demanded anything in the marriage and she is suffering from skin disease. It further appears from the show cause that she used to abuse and threaten the petitioner to implicate in the case and petitioner came to know that the opposite party no.2 has an illicit relationship with some other man, due to which, she did not



want to live with the petitioner and on the instigation of her brother, she filed the present case.

4. The evidence of both the parties have been recorded by the Family Court and the learned Family Court vide impugned order dated 16.02.2016 ordered for payment of Rs.5000/- per month to her and Rs.2000/- to her son.

5. Being aggrieved, by the said order, the present revision application has been filed.

6. The ground for assailing the impugned order is that the opposite party no.2 in her maintenance application has prayed for Rs.4000/-, only as maintenance to her and her child but the learned Family Court has ordered for grant of Rs.7000/- to her and her son, which is not sustainable in the eye of law. Further, ground taken by the petitioner that he is a Government employee and according to his pay slip shows which has been produced before the Court (Ex.H) his gross salary of Rs.15109/- and after deduction of Rs.6361/3, net pay is Rs.8148, but in spite of that learned Family Court has allowed the maintenance to the tune of Rs.7000/- to the petitioner and her son, which appears to be excessive and that ground also the impugned order cannot sustain.

7. On the other hand, learned counsel for the opposite party no.2 has defended the impugned order on the ground that though she has



made a prayer for grant of Rs.4000/- per month to her but the maintenance application was filed in the year 2008 whereas the order has been passed in the year 2016, as such, considering the price increase during this period, the maintenance of Rs.7000/- has been allowed. Hence, there is no illegality in the impugned order. It has also been submitted by the learned counsel for the opposite party no.2-wife that the learned Family Court relying on the salary slip of the petitioner of November, 2011, which shows gross salary of Rs.15109/-, had allowed Rs.7000/- to her and her son, which does not appear to be excessive. It has further been submitted that pay slip was of the year 2011 and by now his salary must have been increased two fold. Learned counsel for the opposite party no.2 has submitted that mother of the petitioner is a pension holder and as such, claim of petitioner of maintaining his mother also is nothing but to place wrong fact before this Court.

8. Considering the entire facts and discussion above and on perusal of the record, it appears that no doubt, she has prayed for Rs.4000/- per month for herself and her son, whereas Rs.5000/- per month to her and Rs.2000/- per month to her son was allowed by the learned Family Court. However, in this case, the application for maintenance has been filed in the year 2008, whereas order for maintenance has been allowed in the year 2016 and moreover it has



been submitted that petitioner has produced the salary slip of 2011 and apart from that petitioner has other income also. Considering the same for the ends of justice that court is not inclined to interfere with impugned order on the ground that award of maintenance is more than the claim of appellate party no. 2 in her maintenance application.

9. Petitioner has also assailed the impugned order on the ground that award of maintenance is excessive, considering the fact that salary slip (Ex.H) disclosed gross salary as Rs. 15109/-, whereas net salary is Rs. 8148/- only after cutting deduction, however, during course of argument learned counsel for petitioner has admitted that he is not entitled for consideration of all deduction, rather only standard deduction which may be around 15-20% and even though his income is around Rs.12,000/- in which he has to maintain his second wife and her children also, as such award is excessive. The above point raised by petitioner is contested by opposite party no.2, submitting that petitioner has not produced the recent salary slip and he has agricultural income also.

10. On perusal of record, I find force in the argument of the petitioner and award of Rs.5000/- per month to the opposite party no.2-wife and Rs.2000/- per month to her son, i.e., altogether Rs.7000/- per month expenses to be excessive.



11. In view of the discussion made above, impugned order is modified to the extent that award of Rs.7000/- per month to the opposite party no.2 and her son is modified to Rs.5000/- per month.

12. Learned counsel for the opposite party no.2 has also submitted that the learned court below has considered the salary slip of November, 2011 by now and he must have been getting more than 20% and as such, she is entitled for more expenses.

13. Considering the entire discussion made above, I find no inherent illegality in granting the maintenance to the opposite party no.2 and her son, however as it appears to be excessive, as such, award of maintenance of Rs.7000/- is modified altogether Rs.5000/- per month for maintenance of opposite party no.2 and her son both.

14. Accordingly, this revision application is disposed of with the above modification.

15. It is needless to say that if there is any change of circumstances, the opposite party no.2 is free to move before the Family Court in revising the amount of maintenance by filing an application under Section 127 of Cr.P.C.

(Vinod Kumar Sinha, J)

sunil shukla/-

AFR/NAFR	NAFR
CAV DATE	NA
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