

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1119 of 2018

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

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Aftab Ahmad S/o Late Nooruddin Ahmad, R/o Flat No. 301, Park View Apartment, Salimpur, Ahra Gali, Near- I.M.A. Hall, South Gandhi Maidan, P.S.- Gandhi Maidan, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Sanowar Jahan D/o Late Abdul Moghni, R/o Vill.- Hargawan, P.S.- Saare, Distt.- Nalanda at present residing of Mohalla- Belchi House, Darzee Tola, Sabzibagh, P.S.- Pirbahore, P.O.- Bankipur, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Syed Asgher Najmi with
Ms. Daisy Rani, Advocates

For the State : Mr. Jai Narain Thakur, APP

For the O.P. 2 : Mr. Chaudhary Shyam Nandan with
Mr. Sudhish Kumar, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 23-07-2019

Heard Mr. Raghib Ahsan, learned senior counsel along with Mr. Syed Asgher Najmi, learned counsel for the petitioner; learned APP for the State and learned counsel for the opposite party no. 2.

2. The present application has been filed against the order dated 21.07.2018 passed in Maintenance Case No. 60(M) of 2006 by the Principal Judge, Family Court, Nalanda at Bihar Sharif by which the petitioner has been directed to pay Rs. 5,000/- per



month to the opposite party no. 2, who was his wife, and Rs. 3,000/- per month to his daughter, from the date of the application.

3. Learned counsel for the petitioner submitted that after marriage a daughter was born out of the wedlock but then the opposite party no. 2 did not live in the matrimonial home peacefully and herself deserted the husband. It was further submitted that the petitioner has thereafter also divorced her. Learned counsel submitted that the amount fixed by the Court below suffers from legal as well as factual infirmities. On facts, learned counsel submitted that without there being any evidence before the Court about the quantum of income of the petitioner, the amount of Rs. 8,000/- which has been fixed to be paid by him is exorbitant. It was further submitted that the petitioner has superannuated from service in the year 2013 and till date has not been given his pensionary benefits and, thus, he himself is unable to live a decent life. Learned counsel submitted that the opposite party no. 2 cannot *suo motu* act as a guardian of the daughter and, thus, the payment of Rs. 3,000/- as maintenance to the daughter without she being an applicant, is unsustainable. It was submitted that the application itself would disclose that it has not been filed on behalf of the daughter and even in the entire order sheet, there is no discussion with regard to any claim or the requirement of the



daughter but still at the end, maintenance has been awarded, both to the opposite party no. 2 as well as the daughter.

4. Learned APP submitted that the order of the Court is well discussed and does not need any interference.

5. Learned counsel for the opposite party no. 2 submitted that she was ousted by the petitioner but his liability to pay maintenance would not cease even if it is accepted that she is divorced, as Section 125 of the Code of Criminal Procedure, 1973 permits such payment even to a divorced wife. It was further submitted that in the application for maintenance, as well as in the order impugned, it has been discussed that the opposite party no. 2 was meeting the expenses of the daughter also. Learned counsel drew the attention of the Court to reference in the order with regard to the opposite party no. 2 asking for maintenance as well as expenses for education of the daughter as also her marriage, from the petitioner.

6. At this juncture, learned counsel for the opposite party no. 2 tried to show to the Court that this reference was with regard to the petition which the opposite party no. 2 had filed in the Court below. The Court has no hesitation to reject such submission outright as it is a total misreading of what has been written by the Court below. The Court has merely recorded that the opposite



party no. 2 had made various representations and demands with regard to maintenance, expenses for education and for the marriage of the daughter, to the petitioner, but the Court has not said anything that the petitions were filed by the opposite party no. 2 in the proceeding. Moreover, there is neither any pleading on record to show such fact nor there is any discussion in the entire order. Moving ahead, learned counsel submitted that the petitioner would be getting pension and further, that there is regular rental income of Rs. 30,000/- per month and also that a house was sold by the petitioner for a huge amount in which there was share of the daughter also.

7. At this juncture, when the Court again put a direct query to learned counsel for the opposite party no. 2 as to how the Court could have awarded maintenance in favour of the daughter without there being any petition on her behalf or even by the opposite party no. 2 in the capacity of a guardian, as the application does not disclose such fact, learned counsel submitted that the opposite party no. 2 being the mother was a natural guardian and, thus, the same would be deemed to be on behalf of the daughter also. The Court again rejects such stand outright for the reason that the law does not permit or envisage any such deemed application on behalf of any other person unless there is



specific pleading in the application filed by the person concerned. Without going into the aspect as to whether the mother would be the natural guardian or the father, the law would not waive the requirement that any person who is filing an application, if the same has to cover such minor, there has to be a specific pleading that the petition was filed also on behalf of such minor through the applicant. From the pleadings or even in the entire records, it is not even recorded that there was any application at any point of time before the Court that the application for maintenance was also on behalf of the daughter.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the order needs partial interference.

9. As far as the amount of monthly maintenance fixed for the opposite party no. 2 is concerned, the Court does not find any error, either in law or in the quantum fixed. The contention of learned counsel for the petitioner that without any basis such order has been passed as there is no finding how much the petitioner earns, the Court would only notice it for the purpose of rejecting the same. From the discussion in the order impugned, it is clear that the evidence of all the witnesses have been taken into consideration and the Court has noticed that witnesses on behalf of



the opposite party no. 2 were not persuaded or nothing contrary came out from their deposition in the cross-examination. Thus, the Court has correctly relied upon the evidence which was adduced before it during trial. Further, there has been no specific denial on behalf of the petitioner that the earnings, as has been shown by the opposite party no. 2 of the petitioner, were totally incorrect. Thus, the Court finds that no interference is required on such account and such part of the order is upheld.

10. Having said that, the Court would now consider as to whether the award of Rs. 3,000/- per month as maintenance to the daughter is required to be interfered with. Though, the Court strongly feels that being the daughter, she has a right over the money of her father and also of being maintained by him, but the law requires certain procedures and also certain formalities, in the sense, that the daughter has to move before the competent forum seeking such relief from her father, if it has been denied. In the present case, the Court finds that there being neither any application on her behalf either directly or through her guardian, being the mother, or any other person, the Court could not *suo motu* have taken up her cause and awarded maintenance in her favour. Accordingly, the direction to pay Rs. 3,000/- per month to the daughter being unsustainable, stands set aside.



11. However, the Court would hasten to record that it is not an expression on the merits or entitlement of the daughter of the petitioner and the order has been passed only on the basis of the fact that because she was never an applicant before the Court below, the petitioner has suffered from not being afforded any opportunity to counter or contest his liability to pay any amount to the daughter or to take a stand that he was ready to keep the daughter and take care of her expenses and her marriage. The principles of natural justice mandatorily require that before any order is passed against any person, which visits him with civil/penal/adverse consequences, he is required to be noticed in specific terms and given reasonable opportunity of being heard regarding any allegation/claim against him. In the present case as there was never any application on behalf of the daughter, there was absolutely no occasion or opportunity to the petitioner to contest with regard to paying for the daughter through his wife, i.e., the opposite party no. 2.

12. Accordingly, the Court leaves such question open and the present order will not have any adverse impact on any application which the daughter may file against the petitioner claiming maintenance or any other relief against her father before the appropriate forum, in accordance with law.



13. The application stands disposed off in the
aforementioned terms.

(Ahsanuddin Amanullah, J)

Anjani/-

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