

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.805 of 2016

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

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Ajay Prasad S/o Deenanath Prasad, R/s At- Chhauradano, Bhelwa Ward No-9,
P.S- Chhauradano, Dist- East Champaran.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Usha Devi W/o Ajay Prasad D/o Chhotelal Sah, R/o village- Chhauradano
Bhelwa, Ward No- 9, P.s- Chhauradano, Dist- East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar Singh
For the Respondent/s : Mr.Sri Shyameshwar Dayal

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

7 23-08-2019 This revision application has been filed against the order dated 26.04.2016 passed in Matrimonial (Maintenance) Case No. 165/2007 by learned Principal Judge, Family Court, East Champaran, Motihari, whereby and whereunder, petitioner has been directed to pay Rs. 5,000/- (Rs. Five Thousand) to opposite party no. 2 towards her maintenance as well as the maintenance of her two children i.e. Rs. 3,000/- to opposite party no. 2 and Rs. 1,000/- to each of the children.

2. Facts giving rise to this revision application in short is that a maintenance case was filed by the applicant / opposite party no. 2, which was decided by the learned Family Court vide order dated 21.09.2011, wherein, the petitioner was directed to pay Rs. 4500/- to opposite party no. 2 per month. Against, the said



order, petitioner moved moved this court by filing criminal revision application and a coordinate Bench of this Court vide order dated 11.12.2013 after considering the materials available on record has remitted back to the learned lower court to pass order afresh in accordance with law after making following observation:-

“From the order impugned, it is apparent that petitioner/ husband has been directed to pay Rs.4500/- per month in favour of applicant / wife and the order impugned has been made operative from the date of filing of petition. From the order impugned, it is crystal clear that the learned lower court not only had failed to acknowledge the entitlement of two minor children with regard to maintenance, who must be school going, the source of means as well as total income of husband have also not been properly considered which should have. Consequent thereupon, the order impugned is found to be unsustainable in the eye of law and is accordingly set aside. Petition is allowed. The matter is remitted back to the learned lower court to pass order afresh in accordance with law. However, it is made clear that till disposal



of the proceeding the husband will continue with payment of interim maintenance whatever was directed to be paid by him positively, punctually”.

3. Thereafter, learned Family Court decided the case afresh and passed the order on 26.04.2016 allowing a maintenance of Rs. 3,000/- to opposite party no. 2 and Rs. 1,000/- to each of the children after considering the fact that the respondent (petitioner) is paying Rs. 3000/- per month as ad interim maintenance to the petitioner (opposite party no. 2) and her children vide order dated 26.08.2016 but since eight years have passed and there is change in circumstance and the value of money has gone down due to inflation and the children have also grow up, keeping in view of high price of essential commodities and other articles as well as the financial condition of the respondent (petitioner), learned Family Court allowed a maintenance of Rs. 5,000/- (Rs. Five Thousand) per month i.e. (Rs. 3,000/- for wife and Rs. 1,000/- for each of the children).

4. Being aggrieved, the petitioner has preferred the instant revision application.

5. Submission of learned counsel for the petitioner is that vide order dated 31.01.2017 passed by a coordinate Bench of this Court, petitioner was directed to file a supplementary affidavit



showing that he does not own any property other than a piece of land admeasuring 2 Kathas and the petitioner has already filed the affidavit stating therein that except 2 katha and 8 ½ dhur of land in his share after participation, he has no other land in his name and he has one small egg shop, from which, he ears Rs. 100 -200 per day. Further submission of learned counsel for the petitioner is that vide order date 11.12.2013, the matter was remitted back to the learned Family Court to consider the source of means as well as the total income of the petitioner, but the family court has not assessed the income of the petitioner and passed the order on the basis of interim maintenance and considering the inflation during that period, as such, the order impugned is not sustainable in the eye of law.

6. On the other hand, learned counsel appearing on behalf of opposite party no. 2 drawn the attention of this Court towards para – 23 of the impugned order and submitted that the learned Family Court has considered the evidence brought on record and as per opposite party no. 2, he has six bighas of land and a shop. He has also let out two buildings on rent and he earns Rs. 9,000/- from rent and he earns Rs. 40 to 50 thousand each month from all sources, however, the petitioner denied the same but the learned Family Court has observed that the petitioner is evading the real fact of his income.



7. Having heard both sides, from perusal of the record, this Court finds that though the learned Family Court has mentioned that as per petitioner (opposite party no. 2), respondent (petitioner) has six bighas of land and a shop. He has also let out two buildings on rent and he earns Rs. 9,000/- from rent and he earns Rs. 40 to 50 thousand each month from all sources. However, it appears that no document has been brought on record by the opposite party no. 2 in support of such claim and only on the basis of the fact that petitioner is paying Rs. 3,900/- per month to opposite party no. 2 as ad interim maintenace and the change in circumstance, he has directed the petitioner to pay Rs. 5,000/- (Rs. Five Thousand) per month i.e. (Rs. 3,000/- for wife and Rs. 1,000/- for each of the children) and in my opinion, when there is direction of this court vide order dated 11.12.2013 passed in Cr. Rev. No. 21/2012 to the learned Family Court to consider the source of income as well as total income of the petitioner, the learned Family Court ought to have considered the evidence available on record and after considering the same, he ought to have assessed the income of the petitioner but there is no such finding. As learned Principal Judge, Family Court, East Champaran, Motihari has not complied the direction of this Court, as such impugned order suffers from impropriety, accordingly, the same is set aside.



8. The matter is again remitted back to the learned Principal Judge, Family Court, East Champaran, Motihari, to assess the source of income as well as the total income of the petitioner and, thereafter, pass an order afresh within a period of six months after giving chance to both the parties to adduce the evidence on their behalf, so far income of the petitioner is concerned.

9. It is made clear that during pendency of the case, the petitioner shall continue to pay Rs. 3,900/- per month to opposite party no. 2 as an interim maintenance.

10. With the above observation and direction, this application is, accordingly, disposed of.

(Vinod Kumar Sinha, J)

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