

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.597 of 2016

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

Sunil Kumar Sah S/O Shiv Narayan Sah, Resident of village + P.O. Rajoun,
P.S. Rajoun, District Banka.

... .. Petitioner

Versus

1. State of Bihar
2. Suman Devi (Sah) W/O Sunil Kumar Sah, Resident of village + P.O. Rajoun, P.S. Rajoun, District Banka at present D/O Murlidhar Sah, Resident of village Amhara, Present D/O Murlidhr Sah, Resident of village Amhara, P.O. P.O. Harchandi, P.S. Rajoun, District Banka.
3. Om Prakash S/O Sunil Kumar Sah, under guardisanship of his mother namely, Suman Devi (Sah) R/O Village Amhara P.O. Harchandi, P.S. Rajoun, District Banka.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Ajay Mukherjee
For the Respondent/s : Mr.Sri Nawal Kishore Prasad

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 18-07-2019 This revision application is directed against the order dated 12.4.2016 passed by the learned Principal Judge, Family Court, Banka in Misc. Case No.86 of 2007/Tr. No.07 of 2016, whereby and whereunder the petitioner was directed to pay Rs.2,500/- to O.P.no.2 (applicant) and Rs.2,500/- to her son (O.P.no.3).

2. Factum giving rise to this application in short is that the applicant – O.P.no.2 filed a case being Misc. Case No.86 of 2007 under Section 125 Code of Criminal Procedure (hereinafter to be referred as ‘the Cr.P.C.’) for grant of maintenance stating therein *inter alia* that she was married with



the petitioner but after marriage she was subjected to torture and due to fear she left her *Sasural*, in the meantime, O.P.no.3 was born. Further case of the applicant- O.P.no.2 is that the petitioner has income of Rs.12,000/- per month from the rent and Rs.50,000/- per annum from the agricultural land, as such she has prayed for maintenance of Rs.7,000/- per month for herself and her son.

3. Petitioner-husband has appeared in the maintenance case and though he has admitted the factum of the marriage but he has denied the allegation of torture and submitted that he is still ready to keep O.P.nos. 2 and 3 with him and he has also denied that he has income of Rs.50,000/- per annum from the agricultural land rather he has a shop of *Murhi-Ghughani* at village Katima and he earns Rs.100-200/- per day and that is only source of income of the petitioner.

4. After completion of pleading, the witnesses were examined on behalf of both the parties and on conclusion of the trial, the learned family court has granted maintenance of Rs.2,500/- to O.P.no.2 and Rs.2,500/- to her son per month.

5. Being aggrieved by the above order, the present case has been filed by the husband -petitioner.

6. Grounds for assailing the impugned order is that the



petitioner has only a shop of *Murhi-ghughani* and he earns only Rs.100-200/- per day and in view of the matter, award of maintenance is excessive.

7. On the other hand, learned counsel for the O.P.nos. 2 and 3 has defended the order of the learned Family court on the ground that the petitioner has a shop for refreshment apart from rent and agriculture income, as such grant of maintenance of Rs.5,000/- per month together to O.P.Nos. 2 and 3 is not excessive.

8. Having heard both sides and perused the records, it appears that O.P.no.2 has come with a case that the petitioner has income of Rs.12,000/- per month from the rent and Rs.50,000/- from the agricultural land and Rs.7,000/- per month from shop, whereas the petitioner has come with a case that he has a shop of refreshment having income of Rs.100-200/- per day. He has also admitted that his shop is on the side of the road.

9. The learned court below on consideration of the evidence has come to a conclusion that the income of Rs.100/- per day from the shop of refreshment on the road side does not appear to be probable and the husband- petitioner is suppressing his income , considering the same, the learned Family court has come to a finding that the petitioner-husband have been earning



Rs.600/- per day as such his income must be more than 18,000/- and passed order for maintenance altogether of Rs.5,000/- per month to O.P.nos. 2 and 3.

10. It further appears that it is the admitted case that O.P.no.2 is the wife of the petitioner and O.P.no.3 is the son from that marriage. It is also the admitted fact that the O.P.no.2 and 3 are residing in her *Maike*. It has also come on the evidence that the petitioner has re-married with another lady and as such O.P.no.2 has refused to live with the petitioner . So far income of Opposite Party No.2-wife is concerned, nothing has been brought on the record either in the show cause filed by the petitioner or in the evidence to show any source of income to her, whereas as discussed the learned court below has assessed the income of the petitioner-husband Rs.600/- per day from the refreshment shop.

11. Learned counsel for the petitioner has assailed the above finding on the ground that in village the income of Rs.600/- per day from a refreshment shop is not possible and that is based only on presumption, in spite of the fact that petitioner has come with evidence that he was earning Rs.100-200 per day. However, no document has been produced on behalf of either sides, but even to this Court, it appears that if he



has a shop beside the road, his income from that shop must be around Rs.300-400/- per day and if it is so he must be earning of more than Rs.10,000-12,000/- per month and from that he has to maintain his family including second wife also..

12. Considering the above fact, I find no illegality in the order so far order allowing maintenance application is concerned but so far award of maintenance of Rs.5,000/- per month altogether is concerned, the award of maintenance appears to be excessive, as such this Revision Application is disposed of by upholding the judgment with modification in the grant of maintenance amount is concerned and the same is modified and Rs.3,500/- per month altogether is allowed to the Opposite Party nos. 2 and 3 (Rs.2,500/- to Opposite Party No.2 + Rs.1,000/- to the Opposite Party no.3).

13. With the above observation, this revision application is disposed of..

(Vinod Kumar Sinha, J)

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