

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.816 of 2016

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

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Md. Sarwar, son of Late Zainul Abedin, resident of Village- Arwa Gachhi
Tola, Post Office- Bachwara, Police Station- Bachwara, District- Begusarai.
... .. Petitioner/s

Versus

1. The State Of Bihar
2. Nazma Khatoon Wife of Md. Sarwar,
3. Md. Moazzam, minor son of Md. Sarwar, 2 and 3 are residents of Village-
Arwa Gachhi Tola, Post Office- Bachwara, Police Station- Bachwara,
district- Begusarai, presently residing at Village- Chandehour, Rahimpur
Tola, Police Station- Ujjiarpur, District- Samastipur.
... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Syed Masleh-Uddin Ashraf
For the Respondent/s : Mr.Md. Arif

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 02-09-2019 This revision application has been filed against the order
dated 18.6.2016 passed by Principal Judge, Family Court, Samastipur
in Maintenance Case No. 181 of 2013 whereby and whereunder
Rs.4000/- and Rs.1000/- respectively were allowed to opposite party
Nos. 2 and 3 for their maintenance per month.

The ground for assailing the impugned order is that the
maintenance is allowed without any assessment of monthly or annual
income of the petitioner and finding of the learned Family Court
regarding income of the petitioner as Rs.15,000/- per month is
without any basis, as such the award of maintenance of total amount
of Rs.5000/- to opposite party Nos. 2 and 3 is not sustainable. It has
also been submitted that the learned Family Court has not considered
as to whether applicant has sufficient income to maintain her or her



child.

On the other hand, learned counsel for opposite party No.2-wife has defended the order on the ground that petitioner was given a chance to contest the case but he has not appeared to be examined in the court though he has filed show cause, as such there shall be adverse inference against the petitioner so far income of petitioner is concerned and hence his case that he is rickshaw puller also appears to be without any substance. On the other hand, evidence of applicant disclosed that petitioner is contractor of pasting of marble and he has also a grossery shop, as such learned Family Court has assessed the income of the petitioner as Rs.15,000/- per month, which is the case of opposite party No.2 and hence there is no illegality or impropriety in the said order.

Having heard both sides and on perusal of the record it appears that though petitioner has appeared and filed his show cause denying assertion of opposite party No.2 that he is a marble contractor and has a grossery shop but in spite of his denial he did not appear before learned Family Court to get himself examined and cross-examined and hence opposite party No.2 is prejudiced by non-examination of the petitioner and in such a case adverse inference shall be against the petitioner. Moreover, the other witness examined on behalf of petitioner also does not disclose that he is a rickshaw puller. On the other hand, there is evidence adduced on behalf of applicant, as such court has presumed income of petitioner as



Rs.15,000/- per month. So far income of the applicant is concerned, no such evidence has been brought on the record to show that she has sufficient income to maintain herself or her child. In view of above, the award of maintenance of Rs.4000/- to opposite party No.2 and Rs.1000/- to opposite party No.3 does not appear to be excessive.

It has been submitted by learned counsel for opposite party No.2 that now the disputes between the parties have been resolved on the basis of one time settlement.

In view of the discussions made above, I find no illegality or impropriety in the impugned order. Hence, this application is dismissed.

(Vinod Kumar Sinha, J)

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