

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.73 of 2017

1. Supriya Kumari, Wife of Rishikesh Kumar, Resident of Village-Sabalpur Babhantoli, P.S.- Sonapur, District-Saran, present address- Daughter of Prabhu Narayan Singh, Resident of Village- Dighikala Purvi, Near Pachkorwa Gachhi, P.S. - Sadar Hajipur, District- Vaishali.
2. Vaishnavi Kumari, aged about 9 years, Daughter of Rishikesh Kumar, under the Guardianship of her mother, Supriya Kumari, Resident of Village- Dighikala East (Near Pachkorwa Gachhi), P.S. - Sadar Hajipur, District- Bhojpur.

... .. Appellant/s

Versus

Rishikesh Kumar, Son of Chandeshwar Singh, Resident of Sabalpur Babhantoli, P.S.- Sonapur, District- Saran, Present address Hawaldar N. 7781108H 1062/106, Madhayam Regiment through 56 A.P.O.

... .. Respondent/s

with

Miscellaneous Appeal No. 42 of 2017

Rishikesh Kumar, S/O-Chandeshwar Singh, R/O Village - Sabalpur Jaganpurtoli, Post - Sabalpur, P.S. - Sonpur, Dist - Saran Chhapra.

... .. Appellant/s

Versus

1. The State of Bihar
2. Supriya Kumari, Wife of Rishikesh Kumar and Daughter of Prabhu Narayan Singh, Resident of Village- Dighikala East (Near Pachkorwa Gachhi), P.S. - Sadar Hajipur, District- Bhojpur.

... .. Respondent/s

Appearance :

(In Miscellaneous Appeal No. 73 of 2017)

For the Appellant/s : Mr.Amit Kumar

For the Respondent/s : Mr.

(In Miscellaneous Appeal No. 42 of 2017)

For the Appellant/s : Mr.Rina Sinha

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 25-09-2020

These two appeals being M.A. No. 73 of 2017 and



M.A. No. 42 of 2017, arise out of a common order passed by learned Principal Judge, Family Court, Vaishali at Hajipur in Maintenance Case No. 96 of 2013, hence the same are being disposed of by this common judgment.

M.A. No. 42 of 2017 has been filed by the husband Rishikesh Kumar who grieves the impugned order for the reason that the quantification of the maintenance amount by the learned Court below is excessive and unreasonable.

Per contra, M.A. No. 73 of 2017 has been preferred by the wife impugning the order of learned Court below, primarily on the ground that the quantification of the maintenance amount is not reasonable so as to keep herself sustaining and there is no deliberation and adjudication upon the issue of the entitlement of maintenance with regard to the minor child, Vaishnavi Kumari who was born out of the wedlock.

The factual matrix of the case is that the appellant and the respondent, namely Supriya Kumari and Rishikesh Kumar got married on 02.05.2008 and subsequently, they were blessed with a female child on 15.01.2010. The husband, Rishikesh Kumar is posted as Hawaldar in the Army and these facts are not in dispute. The relationship between the wife and the husband got strained subsequently, leading to filing of



Maintenance Case No. 126 of 2010 on 18.09.2010 by the wife, Supriya Kumari before the learned Principal Judge, Family Court, Vaishali at Hajipur and Divorce Case No. 18 of 2011 by the husband, Rishikesh Kumar, but on the initiation of the case, the matter was compromised between the parties, as a result both the maintenance and divorce case were withdrawn. But it appears that subsequently again, relationship between the parties got strained leading to filing of Complaint Case No. 2755 of 2010 by the wife Supriya Kumar against the husband Rishikesh Kumar, which subsequently got registered as Hajipur Sadar P.S. Case No. 343 of 2011, with accusation under Section 498A IPC and Sections 3/4 of the Dowry Prohibition Act, after the same being transferred under Section 156(3) of the Cr. P.C. In the said criminal case, the husband, Rishikesh Kumar preferred Cr. Misc. No. 8662 of 2011, with a prayer for grant of anticipatory bail, wherein on failure of the reconciliation, in terms of resumption of conjugal life, the husband, Rishikesh Kumar offered to make payment of Rs. 5,000/- per month to the wife, Supriya Kumari from April, 2012 which was accepted by the wife Supriya Kumari and considering the stand of the parties, this Court vide order dated 12.03.2012, granted privilege of anticipatory bail to the husband, Rishikesh Kumar with a



condition that said payment will be subject to any order being passed in matrimonial or maintenance proceeding.

Subsequently, the wife, Supriya Kumari filed Maintenance Case No. 96 of 2013 under the provision of Hindu Adoption and Maintenance Act, 1956 before the learned Principal Judge, Family Court, Vaishali at Hajipur, whereas the husband, Rishikesh Kumar filed Matrimonial Case No.356 of 2013 before the learned Principal Judge, Family Court, Vaishali at Hajipur with a prayer for dissolution of marriage, which is still pending. In the maintenance case, the wife claimed maintenance amount of Rs. 13,000/- per month for herself as well as for her minor child. In support of her claim, the wife, Supriya Kumari examined three witnesses, P.W. 1 and 3, being the parents of wife, Supriya Kumari and P.W. 2 being the wife herself, wherein the husband, Rishikesh Kumar entered his appearance, but he neither examined any witness, nor produced any documentary evidence.

Considering the fact that marriage between the parties is admitted and the status of the husband, being employed in the Military service, the learned Court below awarded Rs. 8,000/- per month, inclusive of Rs. 5,000/- which was being paid in pursuance to the order dated 12.03.2012,



passed in Cr. Misc. No. 8662 of 2011, as maintenance to the wife, Supriya Kumari. Being aggrieved with the said order, both, the husband and the wife preferred separate appeals, one for enhancement of the maintenance amount and providing maintenance to the minor child and the other for the reduction of the maintenance amount, on the ground of same being excessive.

Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of wife Supriya Kumari submits that there is specific ground as mentioned in paragraph nos. 6 and 8 of the maintenance application that there is a female child born on 05.01.2010 and she is unable to maintain her child. Moreover, in the relief portion, the maintenance was claimed both for the wife and the minor child, but it was not considered and this fact is not in dispute. The marriage and birth of the child are not disputed by the husband, Rishikesh Kumar in the written statement filed by him, along with this fact that he has 15 to 20 bighas of agricultural land and hence, it is claimed that the maintenance should be enhanced and further maintenance should be provided to the minor child also, who is at present nine years old. In support of his contention, he has placed reliance to the case of **Reema Salkan Vs. Sumer Singh Salkan**,



reported in **AIR 2018 Supreme Court 4606** and the case of **Samima Farooqui Vs. Shahid Khan**, reported in **2015(5) SCC 705**.

Mr. Ankit Katariyar, learned counsel for the husband, Rishikesh Kumar submits that he is not disputing the marriage or the birth of the child, but Section 23 of the Hindu Adoption and Maintenance Act, 1956, lays down certain parameters for maintenance. Clause 23(2) stipulates that the Court has also to examine number of the persons entitled for the maintenance amount. The parents and an unemployed brother are dependent on the husband, Rishikesh Kumar. Moreover, the husband, Rishikesh Kumar has not made any default and has made entire payment including the payment in pursuance to the undertaking recorded while granting anticipatory bail by this Court, till June, 2019 and this fact has also not been controverted by learned counsel appearing for the wife, Supriya Kumari. It is further submitted that being anguished with the failure of the matrimonial life, the husband had applied for voluntary retirement though, the same has not been accepted or given effect to. In the circumstances, the quantum of maintenance amount should be reduced.

In reply to the contention raised by Mr. Ankit



Katariyar, learned counsel appearing on behalf of the husband, Rishikesh Kumar; Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of wife, Supriya Kumari, submits that with regard to liability of the parents and others, there was no plea in the written statement filed by the husband nor he led any evidence to that effect, hence at this stage, he cannot take this plea.

Considering the rival submissions of the parties, since marriage between the parties and birth of a female child are admitted facts and this is also not in dispute that in paragraph no.8 of the maintenance application, the wife has specifically stated that she is unable to maintain the child, and in relief portion of the maintenance petition, she has prayed for maintenance for her minor child with effect from 18.09.2010, but the impugned order does not reflect that there is any consideration for providing maintenance amount to the minor child and to that extent, we find that learned Principal Judge, Family Court, Vaishali at Hajipur has failed to decide the issue of maintenance in true perspective.

So far as quantum of maintenance amount is concerned, before the learned Principal Judge, Family Court, Vaishali at Hajipur, the specific case of the wife was that her



husband is getting salary of Rs. 27,000/- per month, but in denial of the same, no documentary proof was produced by the husband. Considering the same, the learned Principal Judge, Family Court, Vaishali at Hajipur awarded Rs. 8,000/- per month, whereas at present, the certificate dated 14.08.2018, issued under the signature of Battery Commander, the gross salary of the husband, Rishikant Kumar is Rs. 50,796/- per month, though, after deductions, the petitioner was getting net salary of Rs. 25,758/- per month. This is not in dispute that the application for voluntary retirement has not been accepted till date.

To provide maintenance under Section 125 Cr. P.C. or under Section 24 of the Hindu Marriage Act, 1956 or under Section 18 of the Hindu Adoption and Maintenance Act, 1956 is for providing social security to the deserted wife or the children and this fact has been noticed by the Supreme Court in the case of **Shamima Farooqui Vs. Shahid Khan** reported in **2015(5) SCC 705**. Paragraph no.19 of the judgment reads as follows:-

“From the aforesaid enunciation of law it is limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes her faith in life reduces. Sometimes, she feels she has lost the tenderest friend.



There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance.”

While considering the quantum of maintenance under Section 125 Cr. P.C., the Supreme Court in the case of **Chaturbhuji Vs. Sita Bai** reported in **(2008) 2 SCC 316** has enumerated that the sole concept of maintenance is to prevent from vagrancy and financial destitution. Paragraph no. 6 of the judgment reads as follows:-

“6. Section 125 Cr. P.C. is a measure of social justice and is specially enacted to protect women and children and as noted by this Court in *Capt. Ramesh Chander Kaushal Vs. Veena Kaushal* falls within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution of India. It is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. It gives effect to fundamental rights and natural duties of a man to maintain his wife, children and parents when they are unable to maintain themselves. The aforesaid position was highlighted in *Savitaben Somabhai Bhatiya Vs. State of Gujarat*.”

While considering the method of determining the quantum of maintenance, the Supreme Court in the case of **Jasbir Kaur Sehgal Vs. District Judge, Dehradun** reported in



(1997) 7 SCC 7 has held that the Court has to consider the status of the parties, their respective needs, the capacity of the husband to pay and the life style the wife was living while she was residing with her husband. Paragraph no.8 of the judgment reads as follows:-

“8. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate.”

In the present case, there is no dispute that the petitioner is still working in the Army and at the relevant time he was Hawaldar and the husband has himself admitted the salary. So far as deductions are concerned, most of the deductions are actually accumulating in favour of the husband which he can receive at the time of retirement, hence this Court finds no justification in adjudication of maintenance amount of Rs. 8,000/- which is inclusive of Rs. 5,000/-, which is being paid in pursuance to the order passed while considering the prayer for anticipatory bail by this Court. So far as providing



maintenance to the child is concerned, birth of a child is not in dispute and this is also not in dispute that she is residing with her mother, hence this Court directs the husband, Rishikesh to make further payment of Rs. 3,000/- to the minor child from August, 2019 till she attains majority. Hence, altogether from August, 2019, the husband, Rishikesh Kumar has to pay Rs. 11,000/- per month to the wife.

The impugned order does not suggest the date of payment of the maintenance amount, however, it is well settled law that when there is no date mentioned, the same is supposed to be paid from the date of passing of the order, though, prayer has been made in the maintenance application for providing maintenance with effect from 18.09.2010, but keeping in view the fact that the husband was making payment of Rs. 5,000/- in pursuance to the order dated 12.3.2012, passed in Cr. Misc. No. 8662 of 2011, and this fact has been considered by the learned Court below, hence we do not want to interfere with the order of the learned Court below to the extent that the wife is entitled to receive payment from the date of order, i.e., 01.12.2016.

Since the minor child was neither party before the learned Court below nor before this Court, this Court permits the counsel for the appellant in M.A. No. 73 of 2017 to implead



the minor child as petitioner under the guardianship of her mother, Supriya Kumari.

The present order would, however, not preclude the husband, if so advised, to maintain an application under the changed circumstances which shall be considered on its own merit without being prejudiced by this order.

Accordingly, M.A. No. 73 of 2017 is allowed to the extent indicated above.

In so far as M.A. No. 42 of 2017 is concerned, there is no specific averment with regard to non-consideration of any of the plea raised by the husband in the trial court nor there is any pleading with regard to any perversity in the impugned order. We, therefore, do not find any merit in M.A. No. 42 of 2017. Accordingly, the same is dismissed.

(Dinesh Kumar Singh, J)

(Arvind Srivastava, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

