

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1261 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Nawada

Md. Faiyaz Alam @ Mohammad Faiyaz, Son of Md. Navizan, Resident of Village - Roh, P.S.- Roh, Dist.- Nawada.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Law Department, Government of Bihar, Patna.
2. Kahkasha Pravin @ Nilu, Wife of Md. Faiyaz @ Mohammad Faiyaz, D/o Md. Azimuddin, Resident of Village - Farha, P.S.- Akbarpur, Dist.- Nawada

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Birendra Kumar, Advocate
For the Respondents-State:		Mr. Sunil Kumar Mandal, SC-3
		Mr. Bipin Kumar, AC to SC-3

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 03-09-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 01.06.2019 passed by the learned Principal Judge, Family Court, Nawada in Maintenance Case No.18 of 2018 whereby he has allowed Rs.5000/- per month as interim allowance to the wife with effect from the date of application i.e. 06.09.2018.

3. Learned counsel appearing for the petitioner submitted that the order impugned passed by the learned Principal Judge, Family Court, Nawada is bad in law as also on facts. The Family Court has failed to appreciate that the petitioner is willing to keep his wife in her matrimonial home with dignity and honour,



but she has refused to live in matrimonial house without any reason. The Family Court has also failed to appreciate that in view of the provisions prescribed under Clause (4) of Section 125 of the Code of Criminal Procedure (for short 'CrPC'), wife shall not be entitled to receive an allowance from her husband if without any sufficient reason she refuses to live with her husband. He has further contended that the petitioner is a student of Diploma in Automobile Engineering pursuing his career. Hence, he has no independent source of income. In absence of any proof regarding the availability of means to the husband, the court ought not to have allowed interim maintenance to the wife.

4. On perusal of the materials available on record, I find that the respondent no.2 had filed an application under Section 125 of the CrPC for grant of interim maintenance vide Matrimonial Suit No.18 of 2018. She had pleaded in her application that she was married to the petitioner on 29.03.2016 as per muslim rites and customs. After marriage, when she went to her *sasural*, she was subjected to cruelty in various ways for non-fulfilment of demand of dowry of Rs.5 lakhs or four bighas land in village-Farha. She was brutally assaulted by the petitioner and his relatives and her signature was taken on blank sheet of stamp papers. In this regard, a case relating to subjecting the wife to



cruelty for non-fulfilment of demand of dowry was filed which is pending in the court of SDJM, Nawada in which the petitioner has not yet appeared. She has further pleaded that she has no source of income and is unable to maintain herself whereas her husband having sufficient means has refused to maintain her. Her further contention is that her husband has a motor garrage of his own out of which, he earns Rs. 50-60 thousand per month. His family has a double storied house. He has got three bighas of land. He also owns commercial vehicle and a fruit shop and from these businesses also, he has substantial income.

5. In the rejoinder to the application filed by the petitioner, he has stated that it is wrong to state that he is earning Rs.50-60 thousand per month. He has further contended that somehow he is pursuing his study at Ranchi.

6. The petitioner has brought on record a certificate issued under the signature of the Principal of Shree Ramakrishna Paramhansh Institute of Technology, Ranchi, Jharkhand on 03.10.2015. A perusal of the same would show that he was a student of Diploma in Automobile Engineering for the academic year 2015-18.

7. If the said certificate is to be believed, it would be evident that before the order impugned was passed on 01.06.2019,



the petitioner had already completed his course of Diploma in Automobile Engineering.

8. The contention made by the wife (respondent no.2) in her application filed under Section 125 of the CrPC that the petitioner owns a motor garrage and commercial vehicle has not been denied in the rejoinder filed by the petitioner.

9. Furthermore, the contention made by the respondent no.2 in her application that the petitioner owns three bighas of land and has a fruit shop also and out of them, he has substantial income has also not been denied by the petitioner in his rejoinder. The petitioner has also not denied the plea taken by the respondent no.2 in her application that she has no source of income to maintain herself.

10. The allegation of physical harm due to persistent demands of dowry would be a reasonable justification for wife's refusal to live with her husband. Hence, the order impugned can not be held to be bad on the ground that the wife is not willing to live in her matrimonial home when she has already launched a prosecution against her husband for subjecting her to cruelty for non-fulfilment of dowry.

11. Regard being had to the facts and circumstances of the case, if the court below has found a prima facie case for



making a order of interim maintenance, I see no illegality or perversity in the order impugned whereby the Family Court has awarded Rs.5000/- per month as interim maintenance to the respondent no.2 with effect from the date of filing of the application.

12. In that view of the matter, I see no merit in this application.

13. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.09.2019
Transmission Date	NA

