

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.812 of 2018

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

Navin Kumar Son of Late Sachhidanand Sinha, Resident of Quarter nO. K-2/2 Road No. 25 A Telco Colony, P.S.- Telco, Distt.- Jamshedpur, East Singhbhum, Jharkhand.

... .. Petitioner

Versus

1. The State of Bihar
2. Kumari Deep Mala, Wife of Navin Kumar, Daughter of Om Prakash, Resident of Verma Auto Parts, Mohalla- Bhaisasur, P.S.- Lori, Distt.- Nalanda.
3. Dipti Mala, Daughter of Kumari Deep Mala and Navin Kumar, Resident of Verma Auto Parts, Mohalla- Bhaisasur, P.S.- Lori Distt.- Nalanda.

... .. Respondents

with

Criminal Revision No. 728 of 2018

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

Kumari Deep Mala Daughter of Om Prakash, Retired Teacher, Presently resided Near Verma Auto Parts, Mohalla- Bhaisasur, Police Station- Laheri, District- Nalanda.

... .. Petitioner

Versus

1. The State of Bihar
2. Naveen Kumar, Son of Late Sachidanand Sinha, Residing at Quarter No. K2/2, Road No. 25 A, TELCO Colony, Post Office Police Station- TELCO, District- Jamshedpur East Singhbhum.

... .. Respondents

Appearance :

(In Criminal Revision No. 812 of 2018)

For the Petitioner/s : Mr.Prabeen Kumar Singh

For the Respondent/s : Mr.Uday Chand Prasad

(In Criminal Revision No. 728 of 2018)

For the Petitioner/s : Mr.Arun Kumar

For the Respondent/s : Mr.Satyavarat Verma

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

5 10-01-2019 Both the revision applications arise out of the same

impugned order and as such they have been taken up together



and are being disposed of by this order at the stage of admission itself.

By the impugned order dated 21.5.2018 learned Principal Judge, Family Court, Nalanda at Biharsharif on the maintenance application filed by wife-applicant (petitioner No.1 in Cr.Rev. No. 728 of 2018 and respondent No.2 in Cr.Rev. No. 812 of 2018) by which opposite party-husband was directed to pay Rs.5000/- per month to the applicant-wife and Rs.3000/- to his daughter (respondent No.3 in Cr.Rev.No. 812 of 2018) in the second week of each month from the date of application as maintenance.

Petitioner-husband has preferred Cr.Rev.No. 812 of 2018 against the impugned order granting maintenance as aforesaid from the date of application, whereas wife-petitioner has preferred Cr.Rev.No. 728 of 2018 for enhancement of the maintenance amount granted by the impugned order dated 21.5.2018. For the sake of convenience, husband is being referred as 'husband-petitioner' and wife is being referred as 'original applicant-wife' hereinafter.

Case, in short, is that original applicant-wife, who is respondent No.2 in Cr.Rev.No. 812 of 2018 and petitioner in Cr.Rev.No. 728 of 2018, has filed a maintenance case before the



Family Court, Nalanda, Bihar Sharif stating therein, inter alia, that she was married with the petitioner and she had a daughter aged about five years and thereafter husband-petitioner and his family members started torturing her for bringing a car from her father and later on her husband executed a bond in TELCO Police Station on the complaint of original applicant-wife and TELCO P.S. Case No. 297 of 2011 dated 10.11.2011 was registered and since then wife-petitioner is residing in the house of her father. Further case is that her husband is working in Tata Motors and his salary was Rs.28,000/- apart from that he has annual income of Rs.18,000/- from 5 bighas of land and a house situated at Jamshedpur, whereas original applicant-wife has no source of income to maintain herself and her daughter and on that ground she prayed for maintenance for herself and her daughter.

Husband-petitioner has appeared in the maintenance case and denied allegation made by his wife stating that father of his wife is a litigant and story of demand is false. Further case of the husband-petitioner is that his wife used to flee away from his house without any information and on protest a case has been lodged at Jamshedpur and thereafter petitioner-husband has filed a divorce case also. Further case is that income from



the landed property was taken away by his grandmother and he has to pay Rs.7000/- to his mother as per agreement. Further case of husband-petitioner is that his wife is B.Ed. She she knows Homeopath also and she is a teacher in private school and getting Rs.15,000/- and she is earning Rs.5000/- from tuition per month and, as such, she is not entitled to maintenance.

On behalf of original applicant-wife three witnesses were examined. On the other hand, husband-petitioner has examined six witnesses, including himself in support of his case. Learned Family Court after conclusion of trial, came to a finding that original applicant is the wife of the petitioner and she has been deserted by her husband and petitioner-husband is working in Tata Motors and getting a fixed salary and as such he is able to maintain his wife and daughter. On the other hand, there is nothing available on record to show that petitioner-wife has any earning and considering the same learned Principal Judge has allowed the maintenance case and directed the husband-petitioner to pay Rs.5000/- and Rs.3000/- respectively to her and her daughter from the date of application.

Being aggrieved by the aforesaid impugned order Cr.Rev.No. 812 of 2018 has been filed by the husband-petitioner



on the ground that his wife has earning and she is able to maintain herself and secondly on the ground that the maintenance amount granted by the Family Court is excessive and further on the ground that learned Family Court had erred in law in allowing the maintenance from the date of application as no reason has been assigned for that.

On the other hand, original applicant-wife has filed Cr.Rev.No. 728 of 2018 against the impugned order for enhancement of the maintenance amount considering the income of her husband as she has to spend huge amount towards study of her daughter and in support of her case she has annexed income tax returns for the years 2015-16 and 2016-17 in Cr.Rev. No. 728 of 2018 to show that her husband has income more than Rs.30,000/- per month and apart from that he is also getting Rs.9000/- and Rs.18,000/- per month from the landed property and house.

On perusal of evidence as well as materials available on record it appears that both the parties have admitted they are husband and wife and they have a daughter and husband-petitioner has also admitted in Cr.Rev.No. 812 of 2018 that he is working in Tata Motors and getting fixed salary from Tata Motors. He has also not considered the return filed by original



applicant-wife, as such there is no dispute with regard to that. husband-petitioner has challenged the impugned order, as stated above, on the ground that his wife has income from school and tuition . However, from perusal of the record it appears that no chit of paper has been produced in support of the case of husband-petitioner and as such learned Family Court has rightly inferred that the wife has no income. Second ground for assailing the impugned order by the petitioner-husband is that the maintenance granted to the wife and her daughter is excessive. On that point the evidence available on record was assailed by the Family Court that original applicant-wife has stated in her evidence that her husband is getting Rs.30,864/- per month and apart from that he has income of Rs.9000/- from the landed property and Rs.18,000/- from the house, whereas husband-petitioner has come with a case that he is working in Tata Motors and except that he has no other source of income. It further appears from perusal of the record that husband-petitioner has also come with a case that as per agreement he has to pay Rs.7000/- to his mother also. On the other hand, wife has filed the revision application for enhancement of the maintenance amount on the ground that her husband has income of more than Rs.30,000/- per month and in support of her



contention wife-petitioner has filed Cr.Rev.No. 728 of 2018 and brought on record the income tax returns of her husband for the assessment year 2015-16 and 2016-17 and also assessment year 2017-18, from which it appears that husband-petitioner has gross income in the year 2015-16 of Rs.4,71,043/- and after statutory deductions he was getting Rs.3,21,040/- , whereas in the year 2016-17 he has gross income of Rs.4,57,396/- and after all deductions he was getting Rs.3,07,400/- and for the year 2017-18 his gross income was Rs.4,78,148/- and after all statutory deductions he was getting Rs.3,28,150/-. So it appears that the petitioner-husband has income of roughly Rs.3,20,000/- per annum and considering that it appears that he has net income of Rs.27,000/- per month and petitioner-husband has come with a case that that he has to maintain his mother also and pay Rs.7000/- per month to her also. On the other hand, his wife has filed certificate granted by the school to her daughter which shows that she has to deposit some amount towards annual charges, etc. of her daughter in school. It is well established that wife is also entitled to life status as per status of her husband and she is entitled to maintenance accordingly and it is also well settled that 1/3 amount of income of the husband is appropriate as maintenance in favour of the wife and her



children. Considering the same and considering the income of the petitioner-husband, which has come to around Rs.27,000/- per month, the maintenance amount of Rs.5000/- and Rs.3000/- to his wife and child respectively appears to be little less and, accordingly, to my opinion, original applicant-wife is entitled to Rs.5,500/- and daughter is entitled to Rs.3,500/- per month, altogether to Rs.9000/- per month.

Petitioner-husband has also challenged the order of learned Family Court for payment of maintenance amount from the date of application stating that no reason has been assigned. However, Section 125(2) of the Code of Criminal Procedure expressly enables court to grant maintenance from the date of order or from the date of application and an argument has been advanced by the husband-petitioner in Cr.Rev.No. 812 of 2018 that no reason has been assigned for granting maintenance from the date of application. In the present case the order of learned Family Court has specifically made direction that maintenance amount be paid from the date of application and further there is nothing available on record to show that during pendency of the case the wife or the daughter has been granted any interim maintenance or she has any other source of income.

Learned counsel for the original applicant-wife has



submitted that the the Act itself disclosed that the maintenance can be granted either from the date of application or from the date of order and in this case the learned Family Court has allowed the maintenance amount to be paid from the date of application and there is no illegality in it and in support of his contention learned counsel has relied upon a decision of Hon'ble Apex Court in the case of **Jaiminiben Hirenghai Vyas and another vs. Hirenghai Rameshchandra Vyas : (2015) 2 SCC 385.**

Having heard both sides and after going through the judgment of the Hon'ble Apex Court in Jaiminiben's case (supra), it appears that facts disclosed above clearly disclosed that original applicant-wife has no source of income nor she was allowed any interim maintenance, as such that reason had been assigned in the impugned order in so many words but it appears that there are good reasons for granting maintenance from the date of application.

Learned counsel for the petitioner-wife has submitted that petitioner-husband has not paid a single farthing towards maintenance in this case and as such huge amount is due to with petitioner-husband. However, learned counsel for the petitioner-husband has submitted that so far arrear of maintenance amount



is concerned, he is ready to deposit an amount in one lump sum, otherwise petitioner-husband will not be in a position to pay the whole amount as he has other liabilities also and he will be paying the maintenance amount from the date of order passed by this Court.

Having heard both the parties and considering the case in its entirety, both the revision applications are being disposed of with modification in the impugned order granting maintenance by enhancing the amount from Rs.5000/- to 5,500/- and from Rs.3000/- to Rs.3,500/- to the wife and daughter respectively per month as maintenance amount, altogether Rs.9000/- per month, which will be deposited in the second week of every month. So far arrear of maintenance amount is concerned, the petitioner-husband is directed to pay Rs.3,00,000/- in one lump sum, which will be payable in three instalments, first instalment of Rs.1,00,000/- is directed to be deposited by the husband-petitioner within one month from the date of order of this Court and so far the amount of Rs.2,00,000/- is concerned, the same will be deposited in two equal instalments within two months thereafter. In case of default, original applicant-wife is at liberty to move the Family Court for realisation of the amount in accordance with law.



With the above observation, both the revision applications are disposed of.

(Vinod Kumar Sinha, J)

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