

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No. 31 of 2018
Arising out of
Miscellaneous Appeal No. 817 of 2016

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

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Ranjan Kumar @ Ranjan Kumar Ram, Son of Ram Pratap Ram, Resident of Village-Cheriya Bariarpur, Post- Shripur, P.S.- Cheriya Bariarpur, District-Begusarai.

... .. Petitioner/s

Versus

Sharmila Kumari, Daughter of Bachchu Das, Resident of Village- Nawabganj, P.O. Alinagar, P.S. Suryagarha, District- Lakhisarai.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Raj Kumar Rajesh and Mr. Girish Chandra, Advocates
For the Opposite Party/s :		Mr. Manoj Kumar and Mr. Nitish Kumar, Advocates

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 27-08-2019

Heard learned counsel for the petitioner and learned counsel for the opposite party.

2. The petitioner has moved the Court under Section 19(4) of the Family Courts Act, 1984, against the judgment dated 20.05.2016 passed in Maintenance Case No. 09 of 2015 by the Principal Judge, Family Court, Lakhisarai by which he was directed to pay Rs. 10,000/- per month to the opposite party, who is his wife and had filed the Maintenance case.

3. Learned counsel for the petitioner submitted that the petitioner has not been granted fair opportunity to place his case in



view of the Court having debarred him from filing written statement by order dated 16.02.2016. It was submitted that the same has caused prejudice to the case of the petitioner as he was not allowed to place materials in support of his contention that the opposite party was not entitled to any maintenance. It was submitted that the Court does not have power to debar the party from filing show cause as the provision is related to civil matters under the Code of Civil Procedure but not permissible in criminal matters. It was further submitted that even Section 125(4) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') stipulates that if the wife and husband are living separately by mutual consent, the wife shall not be entitled to receive any allowance or maintenance. Learned counsel drew the attention of the Court to a declaration which has been signed by the petitioner and the opposite party in which it has been accepted that she, out of her own free will, was not living with the petitioner and that she as well as the petitioner were free to again marry any other person whom they desire. Learned counsel submitted that the petitioner's gross salary is Rs. 28,017/- and after deduction, he receives only Rs. 22,494/- and, thus, by the principle of 1/3rd, the amount should not exceed Rs. 7,500/-.



4. Learned counsel for the opposite party submitted that the order passed by the Principal Judge is sound, both in law as well as on facts. It was submitted that despite the petitioner having been granted innumerable opportunities, he chose not to file any written statement/objection and thereafter on 16.02.2016, he was debarred from filing show cause. It was submitted that there is no restriction in law for a Court to debar a party from filing any application if it is shown that the said party is misusing the opportunity given by the Court and has not been doing so for many occasions. It was submitted that upon appearing, the petitioner did not file his objection on 22.09.2015, 05.10.2015, 30.10.2015, 30.11.2015, 16.01.2016 and finally on 16.02.2016, he was debarred from filing such show cause. It was submitted that such blatant abuse of the process of the Court has rightly been taken note of by the Court and he has been debarred. Learned counsel submitted that even if it is assumed that such order was bad or the petitioner was really aggrieved by the same, it was incumbent upon him to move before the superior Court for setting aside the order dated 16.02.2016 by which he has been debarred from filing show cause. It was submitted that the petitioner all along being represented by the counsel and not moving before the superior Court against the order dated 16.02.2016, now cannot



take such plea after final order has been passed by the Court below. Learned counsel submitted that with regard to his points not being considered, the same is erroneous. It was submitted that the so called declaration signed by the petitioner and the opposite party is concerned, the same has been taken note of in the judgment of the Court below and the Court has given its reasons why the same would not act or come in the way of the Court allowing maintenance in favour of the opposite party. It was submitted that the Court has considered the plea of opposite party that upon playing fraud her signature was taken on a blank paper. Learned counsel submitted that the Court below has rightly gone by the principle of allowing 1/3rd maintenance assuming the salary of the petitioner to be between Rs. 30,000/- to Rs. 35,000/- per month. It was submitted that the Rule of 1/3rd is not a strict rule and in the present case, when the opposite party is his only wife, after payment of Rs. 10,000/-, even as per the own showing of the petitioner, Rs. 12,494/- still remains for his own expenses, is most reasonable. It was further submitted that the petitioner being in the Central Reserve Police Force, his expenditure on boarding and lodging is minimal, as substantially, the same is borne by the authorities. Thus, it was submitted that the order for payment of Rs. 10,000/- per month maintenance to the opposite



party is most reasonable and fair. Learned counsel submitted that the objection with regard to the provision of Section 125 (4) of the Code that the wife shall not be entitled to receive allowance if by mutual consent they were living separately, does not apply in the facts and circumstances of the present case, for the Court has itself dealt with the so called declaration of such fact and has clearly written in the order that the opposite party had taken a stand that the same was fraudulently got signed by the petitioner from her by taking her signature on plain paper.

5. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any ground to interfere in the order impugned. As has rightly been submitted by learned counsel for the opposite party, the petitioner was debarred from filing show cause after giving him more than reasonable opportunity of doing so. Further, after such debarment, only after three months the order was passed, but in the meantime, the petitioner took no steps and did not move before the superior Court for setting aside such order by which he was debarred from filing show cause. Further, the contention of the petitioner with regard to the reasonableness of the quantum of the maintenance fixed, the Court finds that on the own showing of the petitioner, Rs. 10,000/- allowed in favour of



the wife is reasonable, moreso when the petitioner being in field duty of the Central Reserve Police Force, but naturally has his expenses of boarding and lodging borne by the authorities for which he does not have to pay. As far as the provision of Section 125 (4) of the Code is concerned, the Court agrees with the submission of learned counsel for the opposite party that in the present case there is no such finding with regard to the wife living separately by mutual consent. At the cost of the repetition, the Court may observe that the Court below has itself taken note of the fact that the signature of the wife was taken by the petitioner fraudulently on a plain paper. Thus, no reliance can be placed on such so called declaration. At this juncture, another vital aspect which the Court would indicate is that even before this Court, no other point was raised and whatever point was raised by learned counsel for the petitioner has either been dealt with by the Court below or considered by this Court. Thus, the Court does not find any ground even for remitting the matter back to the Court below as all the contentions of the petitioner have been considered, either by the Court below itself or by this Court.

6. For reasons aforesaid, the application stands dismissed.

7. The Lower Court Records be returned forthwith.



8. However, since earlier the Court under its order dated 15.01.2019, had granted interim relief to the petitioner by permitting him to pay Rs. 5,000/- per month from February, 2019, for the purposes of the present case, the petitioner’s liability to pay shall be only Rs. 5,000/- from February, 2019 till August, 2019. However, for the previous period, as well as commencing September, 2019 onwards, the petitioner shall be liable to pay Rs. 10,000/- in terms of the judgment of the Court below. Arrears due, if any, be cleared within two months.

(Ahsanuddin Amanullah, J.)

P. Kumar

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