

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No. 434 of 2018

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

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Md. Ejajullah, Son of Md. Mohsin, Resident of Village- Dhanhara, P.S.-
Parsauni, District- Sitamarhi.

... .. Petitioner/s

Versus

1. Gulshan Khatoon, Wife of Md. Ejajullah, Daughter of Md. Mohiuddin.
2. Md. Danish Son of Md. Ejanllah.
3. Md. Sahib, Son of Md. Ejaullah, All are Resident of Village- Dhanhara, P.S.-
Parsauni, District- Sitamarhi.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 22-11-2019

Heard learned counsel for the petitioner.

2. The petitioner has moved the Court against the order dated 11.12.2017 passed in Miscellaneous Case No. 61 of 2012 by the Principal Judge, Family Court, Sitamarhi has awarded payment of monthly maintenance of Rs. 2,500/- in favour of the opposite party no. 1, who is his wife and Rs. 1,000/- each in favour of the opposite parties no. 2 and 3, who are the sons of the petitioner.

3. Learned counsel for the petitioner submitted that the amount is high and no evidence was adduced on the point of earning capacity of the petitioner. It was further submitted that the



petitioner has divorced the opposite party no. 1. Learned counsel submitted that he earns Rs. 2,000/- per month and, thus, payment of Rs. 4,500/- per month is beyond his capacity.

4. From the discussions made in the order impugned, it is obvious that the Court has taken a very pragmatic and reasonable approach in the matter. Testing it from another angle, even if it is assumed that the petitioner may not be employed and not earning a good salary, and would be working as a daily wager and that too, not for the whole month, still an amount of Rs. 4,500/- per month is well within his capacity to pay, especially keeping in mind the fact that there is a wife and two children to be supported. Once, the opposite party no. 1 having married the petitioner and the two sons being his children, the petitioner has to take responsibility. Thus, the Court below was not obliged in law to go for a fact finding enquiry with regard to the capacity of the petitioner as the amount ultimately fixed is most reasonable and in no view of the matter, can be said to be exorbitant or unjustified. Further, even if it is accepted that the petitioner may have divorced the opposite party no. 1, Section 125 of the Code of Criminal Procedure, 1973, provides for payment of maintenance even to a divorced wife. Thus, the petitioner would not have the luxury of taking a stand/defence that he is earning much less, for, if he is



capable of earning, has to earn, even as a daily wager, if so required, but he has to ensure that the payment to the opposite parties is made, as it is his responsibility to maintain them under law.

5. For reasons aforesaid, the Court finds no merit in the application.

6. Accordingly, the same stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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