

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.699 of 2018

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

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1. Runna Kumari @ Runa Kumari, D/o Parmanand Singh, wife of Ashok Kumar Rai,
 2. Adity, D/o Ashok Kumar Rai,
 3. Ayush, S/o Ashok Kumar Rai, both are under the guardianship of their mother Runna Kumari, all are residents of Qtr. No. 264J, Account's Colony, Sonapur, P.O. and P.S. Sonapur, District - Saran at present at A - 146, Housing Colony Yashoda Devi Path, Kanakrabadh, P.S. Kanakrabadh, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ashok Kumar Rai, son of late Ram Ganesh Rai, resident of village - Kil Gorhara, P.S.- Barauni, District- Begusarai, at present residing at Qtr. No. 264-J Account's Colony Sonapur, P.O. and P.S. Sonapur, District - Saran, Employees as Helper - II, Telephone Exchange Office, Sonapur, East Central Railway, Sonapur.
3. DRM, East Central Railway, Sonapur.

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr. Aditya Narayan Singh-1, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For O P No.3	:	Mr. Bijoy Kumar Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 15-10-2019

Heard learned counsel for the petitioners, learned APP for the State and learned counsel for the Railways. The petitioners are also present in Court.

2. The petitioners have moved the Court under Section 19 (4) of the Family Courts Act, 1984, for enhancement of maintenance amount awarded by the Principal Judge, Family



Court of Rs.8,000/- by order dated 07.03.2018 passed in Maintenance Case No.15 of 2016.

3. The petitioner no. 1 is wife and petitioners no. 2 and 3 are daughter and son of the opposite party no. 2, who is working under the Railways. Due to reasons mentioned in the application filed by the petitioners before the Principal Judge, Family Court, Patna, in Maintenance Case No.15 of 2016, they had to leave the matrimonial home and they are living in the house of the parents of petitioner no. 1.

4. From the order dated 07.03.2018, it transpires that even before the Court below the opposite party no. 2, despite valid service of notice, had not appeared and the matter was decided *ex parte*.

5. Being conscious of the nature of the dispute, the Court was of the opinion that the opposite party no. 2 must be heard before any final view is taken in the matter. Accordingly, keeping in mind the past conduct of the opposite party no. 2 that he had not appeared before the Court below, the DRM, Sonapur, East Central Railway, was added as opposite party no. 3 in the present proceeding and was directed to ensure presence of the opposite party no. 2 before the Court today.



6. Counter Affidavit has been filed on behalf of the opposite party no. 3 bringing on record copy of letter dated 25.09.2019 issued to the opposite party no. 2 directing him to appear before the Court today and indicating that if he does not do so, departmental proceeding shall be initiated against him. The opposite party no. 2 has received the letter on 25.09.2019 itself. However, neither he is present nor he is represented by any counsel before the Court today when the matter was taken up and heard.

7. In the aforesaid background, this Court is also constrained to proceed *ex parte* against him.

8. Learned counsel for the petitioners submitted that opposite party no. 2 earns Rs.40,000/- per month by way of salary and other emoluments and Rs.8,000/- awarded by the Court below is too meager an amount to ensure proper and decent living of the petitioners. It was also submitted that due to opposite party no. 2 being addicted to alcohol and other vices, the petitioner no. 1 was forced to leave the matrimonial home. It was submitted that in such view of the matter, the petitioners should have been granted at least $\frac{2}{3}$ rd of salary of the opposite party no. 2.

9. On a query of the Court, learned counsel for the Railways (opposite party no. 3) with regard to the monthly



emoluments of the opposite party no. 2, submitted that he did not have the exact figure, but it should not be less than Rs.35,000/-.

10. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the Court below has not correctly fixed the monthly maintenance as was required to be done. When there was no material before the Court below to rebut the claim of the petitioners that salary of the opposite party no. 2 was Rs.40,000/- and taking into account the fact that the petitioner no.1 herself and her minor son and daughter require substantial financial assistance to live a decent life and also to pursue their education, the Court had to be more sensitive to the requirement of the petitioners in view of the materials before it relating to income of the opposite party no. 2. Today, when before the Court, learned counsel for the Railways has informed that his salary is not less than Rs.35,000/- per month, the Court has no hesitation to allow the application.

11. Accordingly, a consolidated sum of Rs.20,000/- per month is awarded in favour of the petitioners. The same shall be directly credited into account of petitioner no. 1 by the competent authority of the East Central Railway by the 7th of the following month starting from October, 2019.



12. The petitioner no. 1 shall furnish the account number details in which the Railways shall directly credit the amount of Rs.20,000/- per month after deducting the amount from the salary of the opposite party no. 2, to learned counsel for the Railways.

13. Coming to the conduct of the opposite party no. 2, despite him being relieved yesterday for his appearance before the Court with observation that if he does not do so, departmental proceeding shall be started against him, he has not appeared, the Court finds that if proceedings are initiated against opposite party no. 2, it may result in a position that full salary of the opposite party no.2 shall not be payable and, thus, payment of Rs.20,000/- to the petitioners may not be possible. Thus, the Railways would not take any action against opposite party no. 2 for his non-appearance today.

14. However, for such conduct, the competent authority shall deduct Rs.15,000/- from his salary @ Rs.5,000/- per month in three installments and the same shall also be paid along with Rs.20,000/- for next three months as directed earlier.

15. Learned counsel for the petitioners submitted that even Rs.8,000/-, as was required to be paid in terms of the order impugned, has not been paid. In view thereof, the competent authority of the Railways shall continue to make payment of



Rs.25,000/- after deducting the same from the salary of the opposite party no. 2 even beyond three months till the time the dues/arrears of Rs.8,000/-, as awarded by the Court below, is satisfied.

16. The application stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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