

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.740 of 2015

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

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Raghunandan @ Sohan Trivedi, S/o Sri Umesh Trivedi, R/o Vill- Matlupur,
P.S. Pear, District Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar
2. Rinku Kumari, W/o Raghunandan @ Sohan Trivedi and D/o Ramesh Prasad Singh A/P, resident of Village- Narsinghpur, P.S. Mushahari, District Muzaffarpur.

... .. Opposite Parties

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar @ S.K., Advocate
For the Respondent/s : Mr.Zainul Abedinapp, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 03-02-2020 Heard learned counsel for the petitioner. Although the name of learned counsel for the opposite party no. 2 appears in the Daily Cause List but no one has appeared on her behalf. Learned A.P.P. for the State is, however, present.

Petitioner in this case is aggrieved by and dissatisfied with the order dated 13th July, 2015 passed by learned Principal Judge, Family Court, Muzaffarpur in Maintenance Case No. 171 of 2011 by which while exercising power under Section 125 Cr.P.C. the learned Principal Judge, Family Court, Muzaffarpur has awarded a maintenance of Rs. 10,000/- per month in favour of opposite party no. 2 and



accordingly a direction has been issued to the petitioner to pay the said amount from the date of filing of the maintenance petition i.e. 09.11.2011.

Earlier while granting adjournment to the opposite party no. 2 as back as on 18.06.2018, a learned Co-ordinate Bench of this Court had been pleased to pass an interim order directing the petitioner to pay Rs. 3,000/- per month to opposite party no. 2 from the month of June, 2018.

Learned counsel for the petitioner has submitted before this Court that the order dated 18.06.2018 directing the petitioner to pay Rs. 3,000/- per month is being complied with without there being any fault on the part of the petitioner.

Learned counsel has taken this Court through the impugned order. It is his submission that the wife of the petitioner claimed that the petitioner is doing some contract work from which he is earning a sum of Rs. 20,000/- per month. In his show cause, the petitioner took a plea that he has no source of income and he is himself living under the Below Poverty Line and somehow earns livelihood by doing the work as a labourer outside the State of Bihar.

Learned counsel submits that in course of evidence the applicant produced four witnesses but no evidence at all



was adduced to show that this petitioner was having a monthly income of Rs. 20,000/-. The learned Principal Judge, Family Court, Muzaffarpur, has, according to learned counsel for the petitioner accepted the mere statement of the applicant without there being any material on the record and awarded a maintenance of Rs. 10,000/- per month.

It is further submitted that after filing the show cause/reply the petitioner had gone outside the State for earning his livelihood, he could not, therefore, appear in the case and no evidence was adduced on his behalf due to his absence. It is, thus, submitted that an opportunity may be granted to the petitioner to contest the case on merit and for this purpose if the impugned order is set aside and the matter is remanded to the learned Principal Judge, Family Court, Muzaffarpur, he would be willing to pay a litigation cost of Rs. 15,000/- in lump sum to the opposite party no. 2. Learned counsel further submits that during pendency of the application under Section 125 Cr. P.C. on remand, the petitioner undertakes to pay Rs. 3,000/- per month regularly to opposite party no. 2.

Learned A.P.P. for the State is present, however, in the nature of the contest, he has no much role to play in this



matter.

Having heard learned counsel for the petitioner and upon perusal of the records, this Court finds that after filing of the reply the petitioner did not appear before the learned Principal Judge, Family Court, Muzaffarpur and no evidence was adduced on his behalf but at the same time on going through the evidences adduced on behalf of the applicant which have been discussed by the learned Principal Judge, Family Court, Muzaffarpur in the impugned order in paragraph '6' and '7', it nowhere appears that the applicant had adduced any evidence to demonstrate the income of this petitioner. No doubt the opposite party no. 2 in her evidence claimed that this petitioner is earning Rs. 50,000/- per month from the contract work but it appears from paragraph '2' of the impugned order that she had while filing of the application under Section 125 Cr.P.C. set up a case that her husband was earning Rs. 20,000/- per month. It is, thus, apparent that what was pleaded in her application was only Rs. 20,000/- as income of her husband which she later on claimed to be Rs. 50,000/- in her deposition but without there being any evidence on the record.

In such circumstance, this Court is of the considered



opinion that the impugned order is liable to be set aside and the petitioner be given an opportunity to contest the matter by giving him an opportunity to adduce his evidence. The petitioner has himself agreed to Rs. 15,000/- as litigation cost to his wife-opposite party no. 2 which he will pay within four weeks from today. He will also continue to pay Rs. 3,000/- per month to opposite party no.2 and on these conditions which he has offered for setting aside of the impugned order, this Court hereby sets aside the impugned order dated 13.07.2015 passed by learned Principal Judge, Family Court, Muzaffarpur in Maintenance Case No. 171 of 2011. The matter is remitted to the learned Principal Judge, Family Court, Muzaffarpur for a fresh consideration from the stage of evidence of the husband-petitioner.

This Court fixes 24th February, 2020 for appearance of both the parties before the learned Principal Judge, Family Court, Muzaffarpur. On the said date learned Principal Judge, Family Court, Muzaffarpur shall verify from opposite party no. 2 and on finding that she has been paid Rs. 15,000/- as cost and then she is continuously getting Rs. 3,000/- per month as maintenance for the present, he will proceed to fix a fresh date and in any case it is expected that the entire



proceeding will be concluded within a period of six months from the date of receipt/production of a copy of this order.

Let it be recorded that in case of violation as about the undertaking given by this petitioner, it will be open for the opposite party no. 2 to bring it to the notice of this Court.

This application stands allowed to the extent indicated above.

(Rajeev Ranjan Prasad, J)

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