

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.230 of 2018

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

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Sarita Kumari daughter of Kailash Nath Thakur and wife of Sri Avinash Kumar, Resident of Mauja Khedarpur, P.O. Daudnagar, Via Balukaram, P.S. and District Vaishali.

... .. Petitioner/s

Versus

Avinash Kumar son of Awadh Kishore Prasad Singh, Resident of 345/B, Gali No. 17, Durga Bihar Phase No. 2, Dinpur, Najphgarh, New Delhi 110043.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Srinandan Singh, Adv. Ms.Prakritita Sharma, Adv.
For the Opposite Party	:	Mr. Jai Prakash Verma, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 18-02-2020 Heard learned counsel for the petitioner and learned counsel representing the opposite party.

Petitioner in the present case is the wife of opposite party. She is aggrieved by and dissatisfied with the order dated 15.11.2017 passed by learned Principal Judge, Family Court, Vaishali at Hajipur in Maintenance Case No.8 of 2016 under Section 125 of the Code of Criminal Procedure whereby the petitioner has been granted a maintenance amount of Rs.6,000/- per month.

Learned counsel for the petitioner submits that this petitioner was married to the opposite party on 19.06.2001, they have a son from the wedlock but soon after the marriage she



was being subjected to ill behaviour by her husband and in-laws whereafter she started living in her Maik, her husband does not want to keep her, therefore, she would be entitled for a maintenance commensurate to the status of her husband.

Learned counsel further submits that the husband-opposite party is posted as Junior Engineer in the Indian Railway Service and presently he is posted at New Delhi and his salary is about Rs.50,000/- per month. Pointing out to the evidences which were adduced in course of the proceeding under Section 125 Cr.P.C., learned counsel submits that the opposite party had himself deposed in course of the proceeding and has stated that he does not want to keep this petitioner with him due to her cruelty. The son of the petitioner lives with the opposite party and is doing his education at Delhi. It is her submission that there being an admitted income of at least Rs.50,000/- per month in the hand of the opposite party, an award of maintenance of Rs.6,000/- only to the petitioner cannot be said to be a reasonable maintenance and learned Principal Judge has completely erred in not taking into consideration the various judicial pronouncements and the principles laid down by the Hon'ble Apex Court wherein it has been categorically held that the maintenance has to be awarded by taking into



consideration the various aspects including the income of the husband, the status of the parties, their respective needs and reasonable expenses which are required for the maintenance.

Learned counsel has relied upon a judgment of the Hon'ble Apex Court in the case of **Shamima Farooqui Vs. Shahid Khan** reported in **(2015) 5 SCC 705=2015(3) PLJR 58 SC**; the judgment in the case of **Manish Jain Vs. Akanksha Jain** reported in **(2017) 15 SCC 801** and upon judgment of the learned coordinate Bench of this Court in the case of **Dr. Shayan Ahmad Vs. The State of Bihar & Anr.** reported in **2017 (4) PLJR 479**.

On the other hand, learned counsel for the opposite party has opposed this application. It is the submission of learned counsel for the opposite party that even though this opposite party was getting as on November, 2017 net payment of Rs.55,756/- from his service (present salary has not been disclosed despite query made by this Court), he has no other source of income and from this income itself he has to maintain his son and parents as well. It is his further submission that in the given facts and circumstances of the case, the learned Principal Judge, Family Court has committed no error by awarding a maintenance of Rs.6,000/- per month.



Having heard learned counsel for the parties and on perusal of the records, this Court finds that earlier while hearing the parties on 06.02.2020 this Court had directed the opposite party to file an affidavit disclosing the salary which he was receiving as on 15.11.2017 and other sources of income either from his personal or ancestral property. The said affidavit was called for on finding from the counter affidavit filed on behalf of the opposite party that he had shown his monthly expenses at Rs.71,660/- whereas in the court below he had taken a plea that he was getting only Rs.40,000/- per month as salary.

Today an affidavit has been filed on behalf of the opposite party. In paragraph '3' of the affidavit it is stated that as on 15.11.2017 the basic salary of the opposite party was Rs.44,900/- with DA, HRA and Travelling allowance etc. his gross income was Rs.61,701/- and after some deductions he was drawing net pay of Rs.55,756/-. In the affidavit it is stated that he has no other source of income, but at the same time it is also stated that the income which come from agriculture land goes to his father. At this stage, now a statement is being made that he has to take friendly loan to maintain his son as well as his parents including medical expenses of his parents. He has also come with a stand that he has two married sisters and the elder



sister along with two sons one of whom is completely mentally retard also live with opposite party and he bears the maintenance. Learned counsel for the opposite party, therefore, submits that, in the given facts and circumstances, the impugned order needs no interference.

This Court also finds that in the proceeding under Section 125 Cr.P.C. the petitioner as well as the opposite party in the court below had examined two witnesses. While it was the stand of the petitioner-wife in the court below that she had been compelled to live in her Maikie because of the physical atrocities and mental cruelty committed upon her and demand of dowry by the husband and in-laws, the husband-opposite party took a stand that he is not willing to live with the wife-petitioner because of her cruelty.

Be that as it may, it is evident from the records that the entitlement of the petitioner to get maintenance is not in dispute. On the quantum of maintenance, the petitioner-wife claimed that her husband is earning at least Rs.50,000/- per month which was a correct stand as is evident from the affidavit now filed by the opposite party and in fact this was never disputed seriously by him in course of his evidence in the court below.



Learned counsel for the opposite party is unable to demonstrate before this Court that before the learned Principal Judge, Family Court at any stage the opposite party-husband has taken a stand that his parents and one of the sisters are dependent upon him. In the counter affidavit filed before this Court at the earliest opportunity the opposite party-husband disclosed in paragraph '6' his monthly expenses at Rs.71,660/- which includes Rs.10,000/- as medical expenses of ailing parents. What kind of ailment are there from which his parents are suffering have not been disclosed, in the affidavit filed today, however, it has been admitted that there is some income from the agriculture but again the total land which the opposite and his family is possessing have been withheld by him despite a clear order that the opposite party should disclose all his properties. A vague kind of statement has been made that all income derived from the agriculture are being kept by his father.

This is an admission on the part of the opposite party that he is getting income from the agriculture and withholdment of information about the agricultural land and income from the agriculture, from this Court would result in drawing an adverse inference that the opposite party is not disclosing his income correctly and is trying to withheld certain information from this



Court.

Be that as it may, the submission of learned counsel for the opposite party that the opposite party is maintaining one of his sisters was never a stand of the opposite party either in the court below or in the first affidavit filed before this Court. The fact that presently the petitioner who is wife of opposite party has been compelled to live in her Maiké and she has been awarded only a sum of Rs.6,000/- per month takes this Court to consider as to whether in the given facts and circumstances of the case the award of maintenance of Rs.6,000/- may be said to be just and proper. In this connection, it would be relevant to take note of the judgment of the Hon'ble Apex Court in the case of **Shamima Farooqui** (supra). The relevant part of paragraph 14 of the judgment reported in **(2015) 5 SCC 705** is quoted hereunder for a ready reference:-

“14.In today's world, it is extremely difficult to conceive that a woman of her status would be in a position to manage within Rs 2000 per month. It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. The statute commands that there have to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can



never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar. There can be no shadow of doubt that an order under Section 125 CrPC can be passed if a person despite having sufficient means neglects or refuses to maintain the wife. Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance under Section 125 CrPC, unless disqualified, is an absolute right."

(underline is mine)

In the case of **Manish Jain** (supra), once again the aforesaid principles have been reiterated. In this connection, it would be apt to quote paragraph 16 of the judgment hereunder:-

"16. An order for maintenance pendente lite or for costs of the proceedings is conditional on the circumstance that the wife or husband who makes a claim for the same has no independent



income sufficient for her or his support or to meet the necessary expenses of the proceeding. It is no answer to a claim of maintenance that the wife is educated and could support herself. Likewise, the financial position of the wife's parents is also immaterial. The court must take into consideration the status of the parties and the capacity of the spouse to pay maintenance and whether the applicant has any independent income sufficient for her or his support. Maintenance is always dependent upon factual situation; the court should, therefore, mould the claim for maintenance determining the quantum based on various factors brought before the court.”

Following the aforesaid principles a learned coordinate Bench of this Court in the case of **Dr. Shyan Ahmad** (supra) has also reiterated the same view in paragraph 12 of the judgment which reads thus:-

“12. In a proceeding under Section 125 of the Cr.P.C., a right to claim maintenance is not dependent on who is right and who is wrong in matrimonial disputes. Once it is found that the wife is unable to maintain herself and the husband having sufficient means neglects and refuses to maintain her, a duty is cast upon the court to award maintenance. Similarly, in appropriate case, the court can award interim maintenance pending final disposal of the application. The law requires that the court must take into consideration the status of parties and the capacity of the husband to pay maintenance.”

In the light of the aforesaid judgment of the Hon’ble Apex Court and the principles laid down in those judgments when this Court considers the entire facts and circumstances of



the case it would come to a conclusion that the learned Principal Judge, Family Court has erred in not appreciating that the petitioner being wife of the opposite party would be entitled to live in the same status and comfort and it must be commensurate to the status of the opposite party which by no means can be said to be available to the petitioner with a paltry sum of Rs.6,000/- in the present day's price index of the Country. With a sum of Rs.6,000/- per month the petitioner cannot meet her necessary needs of life much less have a reasonable lifestyle. There is no reason as to why the petitioner being the wife of opposite party should not get an amount commensurate to the income of the opposite party. The admitted position is that as on 15.11.2017 the opposite party was getting Rs.55,756/- as net pay, the agriculture income is also there it is totally immaterial as to who is receiving the amount whether the opposite party or his father. At least one thing is clear that the bald plea of the opposite party without there being any material to support his contention that he is maintaining his parents and at the same time saying that agriculture income goes in the hand of the parents cannot go together.

Be that as it may, the stand of the opposite party now being taken with regard to the maintenance of his one of the



sister is nothing but an afterthought and bald statement made at this stage just to impress upon the Court not to interfere with the impugned judgment, however, this Court is not impressed with the changing stand of the opposite party and rejects the improvements which are being made by him by filing an affidavit before this Court at this stage.

This Court is of the considered opinion that in the kind of income which the opposite party was receiving in hand and that too was the net income of the year 2017 which must have increased by now, even considering the amount which he was receiving in the year 2017, the opposite party must be obliged to pay at least a sum of Rs.12,000/- per month to the petitioner.

As a result, the impugned judgment/order is modified to the extent that the opposite party would be liable to pay Rs.12,000/- per month to the petitioner.

The Court has been informed that prior to that the opposite party was paying interim maintenance of Rs.5,000/- per month but after the order dated 15.11.2017 nothing has been paid. The opposite party was not even paying the amount of Rs.6,000/- which was finally awarded by the learned Principal Judge. As stated above, now the maintenance amount of



Rs.12,000/- shall be payable from the same date as was ordered by learned Principal Judge, Family Court, i.e. with effect from the date of filing of the case after deducting the amount already paid by the opposite party as interim maintenance.

This application stands allowed to the extent indicated above.

(Rajeev Ranjan Prasad, J)

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