

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.235 of 2018

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

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Md. Abdul Quayum, S/o Late Md. Ishaque, R/o- Narhat, P.S.- Narhat,
District- Nawada.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Afrin Anjum, W/o Md. Abdul Quayum, R/o- Narhat, P.S.- Narhat, District-
Nawada, at present D/o Late Md. Moinuddin, R/o- Amawan, P.S.- Rajauli,
District- Nawada.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Amresh Kumar Sinha, Adv.
For the State	:	Mr.Sri Mustaque Alam, APP
For the O.P. No.2	:	Mr. Sheo Kumar Prasad, Adv. Mr. Amrendra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

8 27-02-2020 Learned counsel for the petitioner submits that despite his best effort he is unable to contact the petitioner and as such the instructions which were required to be taken from him and the affidavit in terms of the order dated 18.02.2020 cannot be adhered to.

Learned counsel submits that the matter may be heard on its own merit and order may be passed accordingly.

The matter has been heard on merit.

Learned counsel for the petitioner has assailed the impugned order on the solitary ground that the learned Principal Judge, Family Court has awarded a sum of Rs.10,000/- on



account of maintenance without there being any evidence with respect to the income of the husband-petitioner. Learned counsel submits that the petitioner lives at Mumbai and it has come on the record that he is living with his another wife and three children at Mumbai. In his submission the learned Principal Judge, Family Court has assumed the income of the husband-petitioner while passing the impugned order.

On the other hand, learned counsel for the wife-opposite party submits that this Court had given a fair opportunity to the husband-petitioner to take a stand as to whether or not the petitioner is paying at least a sum of Rs.5,000/- per month to the opposite party no.2 as per interim direction of this Court contained in the order dated 27.09.2019 passed by a learned coordinate Bench of this Court but the petitioner did not revert to this Court with an intention to withhold the material information which are in his possession. Learned counsel further submits that this Court had also called upon the husband-petitioner to file an affidavit showing details of his bank accounts and the description of properties both movable and immovable properties. Again this direction of the Court has not been complied with and without complying with the said direction if learned counsel for the petitioner has prayed



for deciding the case on its own merit, it is apparent that he has got instruction of that kind from this petitioner and this is nothing but a clear attempt to withhold the information required by this Court. Since the person who is in possession of these informations has not turned up to disclose such information, in view of the settled judicial pronouncement of the Hon'ble Apex Court, an adverse inference has to be drawn against him.

Learned counsel has thereafter taken this Court through the case of the wife-applicant who has alleged that due to non-fulfillment of demand of dowry the wife-applicant was brutally beaten and her husband had solemnized another marriage with a lady with whom he is living at Mumbai. The applicant-wife has lost his father and she has no source of income to support herself. On the other hand, the husband-petitioner owns two Bolero vehicles and three auto-rickshaw which he is providing on rent in Mumbai and earns income from that at least Rs.60,000/- per month. The husband has also got one bigga paternal property and 10 kathas of commercial land from which he is earning a sum of Rs.10,000/- per month. She has also stated that her husband is dealing in properties and earns from that source also.

In course of evidence the husband had taken a stand



together with the another witness that he is driving the vehicle of another person from which he is earning only Rs.7,000/- per month. Learned Principal Judge has found that the said deposition of the husband was contrary to his pleading in the reply where he has stated that he works in a hotel. It is submitted that in such circumstance where the husband-opposite party withheld information with regard to his income and wife-applicant has come out with specific case with regard to his income it cannot be said that the judgment of the learned Principal Judge is based on non-consideration of the materials or that has no basis to stand. It is submitted that the petitioner has no intention to pay a single farthing to his wife and that is the reason that despite getting interim direction from this Court he neither paid the amount nor moved this Court for modification of the said interim order.

Having heard learned counsel for the parties and on perusal of the records, this Court finds much substance in the submission of learned counsel for the opposite party no.2-wife. To this Court, there is no iota of doubt that the petitioner is withholding the information relating to his income and properties from this Court. His conduct in not obeying the interim order of the Court and not taking any step to get the said



order modified if he was not complied with the same and further conduct that despite opportunity granted to him to file an affidavit he did not come forward with clean hands are such that it would compel this Court to take a view adverse against the petitioner.

It is worth mentioning that although learned counsel for the petitioner submitted before this Court that he is unable to contact the petitioner, at the same time he made a prayer that the case be decided on its own merit. In normal course a lawyer in such circumstance would have prayed to the Court for issuance of notice to the petitioner but that is not the prayer of learned counsel for the petitioner and he has specifically proceeded to submit that the matter be heard on its own merit. In these facts and circumstances where the applicant-wife has come out with specific case as to the source of the income of the petitioner who is admittedly living at Mumbai and the petitioner has not come out with specific stand to controvert the same despite opportunity granted to him, the ground taken by the petitioner that the impugned order has been passed without any basis cannot find favour with this Court.

Section 125 Cr.P.C. is a beneficial provision to help the women who have no independent source of income and are



trying to support herself. In an appropriate case where the husband is found withholding relevant information with regard to his income the Principal Judge has rightly proceeded to pass an appropriate order on the consideration of the entire materials on the record.

In this case, this Court finds no reason to interfere with the impugned judgment. The opposite party no.2 may now proceed to enforce the order.

This application is dismissed.

(Rajeev Ranjan Prasad, J)

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