

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.421 of 2018

In
Miscellaneous Appeal No.635 of 2016

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

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Viveka Nand Singh, son of late Raghunandan Singh, resident of village – Osti Harpur, P.O. & P.S. - Mahua, District – Vaishali.

... .. Petitioner

Versus

Most. Daulat Devi, W/o – late Raghunandan Singh, R/o – Village – Osti Harpur, P.O. & P.S. - Mahua, District – Vaishali.

... .. Respondent

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Appearance :

For the Petitioner/s	:	Mr.Gyanendra Kumar Shukla, Advocate
For the Respondent/s	:	Mr.Manish Chandra Gandhi, Advocate
For the State	:	Mr. Akhileshwar Dayal, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

15 18-08-2022 Heard learned counsel for the petitioner, learned counsel for the sole opposite party as also Mr. Akhileshwar Dayal, learned A.P.P. for the State with whom Mr. Birendra Narayan, the District Education Officer, Vaishali is present.

After hearing learned counsel for the parties, on
19.07.2022, this Court passed the following order:

“Learned counsel for the petitioner submits that the petitioner has not received his salary since December, 2007 because of the complaints made against him by his mother. It is stated in paragraph ‘5’ that because the petitioner is not getting salary since December, 2007, he is anyhow surviving by taking loan and is maintaining his livelihood.

Let a report be called for from the District Education Officer, Vaishali as to why the salary of the petitioner has not been paid since December, 2007.



Learned counsel for the petitioner submits that the learned Family Court had no basis to arrive on a conclusion that the petitioner was getting a salary of Rs.25,000/- per month. By placing reliance upon the acquaintance roll of the petitioner, attempt has been made to show that in the year 2010 the petitioner was getting a total amount of Rs.9,422/- only.

It is further submitted that the mother of the petitioner is getting family pension and at the relevant time admittedly she was getting Rs.8,000/- per month but this case was lodged at the instance of one of the elder brothers of the petitioner who was bent upon harassing the petitioner.

List this matter with the report of the District Education Officer, Vaishali after two weeks i.e. on 4th of August, 2022 under the same heading maintaining its position.”

Today, the District Education Officer, Vaishali has filed a counter affidavit. He has narrated the reasons behind non-payment of salary to the petitioner. After going through the reasons stated in his counter affidavit, this Court need not go into much detail in those reasons in the present proceeding, therefore, those are not being referred to.

What is relevant for purpose of the present case is the information furnished by the District Education Officer that in the year 2010 the basic salary of the petitioner was Rs. 14,330/- and in the year 2014 it was Rs. 16,140/- only. According to him, the house rent allowance, the dearness allowance and the medical allowance are to be added to these amounts to make it



the gross salary of the petitioner and he has assessed the same at about Rs. 20,000/- per month during the relevant time. He has further informed that out of the gross salary amount, statutory deductions on account of PF would be about 6.25% of the basic salary and then the petitioner would be liable to pay the income tax thereon within the prescribed slab applicable to his income.

Learned counsel for the opposite party does not dispute the information furnished by the District Education Officer, Vaishali.

The another important fact is that admittedly the opposite party is getting family pension and presently her family pension amount is Rs. 10,000/- per month approximately. This has been informed by none else than her own Advocate in this Court. She has no other dependent on her. Her another son is already pursuing his livings practicing medicines at local level in the village whereas one of her grand-sons is employed as a teacher who takes care of his own family. The opposite party has thus no liability except to maintain herself.

Learned counsel for the petitioner submits that on bare perusal of the impugned judgment, it would appear that the learned Principal Judge, Family Court, Vaishali was not duly informed about the family pension amount which was being



received by the opposite party at the relevant time. He wrongly assumed on his own that this petitioner gets more than Rs. 25,000/- per month. There was no material on record to suggest that the petitioner was getting that much amount and the stand of the petitioner is now vindicated from the information furnished by the District Education Officer. It is, thus, his submission that the impugned judgment is based on erroneous assumption of facts with regard to the income of the petitioner and that has been done while ignoring the material information that the opposite party is getting sufficient amount to maintain herself by way of family pension per month.

Learned counsel for the petitioner, however, on instruction offers that in deference to his mother, he is himself willing to pay a sum of Rs. 2500/- per month to his mother. Learned counsel has submitted that this petitioner has got one daughter who is in marriageable age and his only son is still studying. He has no other means of income, therefore, he has to maintain his family of four members while taking care of study of his own son and marriage of his daughter. Learned counsel submits that in such circumstances an appropriate order be passed.

Mr. Manish Chandra Gandhi, learned counsel for the



opposite party having understood the circumstances which have been brought to the notice of this Court took some time to seek instruction from the opposite party and after telephonically talking to her, learned counsel has submitted in this Court that the opposite party would be happy with a sum of Rs. 2500/- per month.

With consent of the parties, therefore, the impugned judgment is hereby modified. The petitioner shall pay a sum of Rs. 2500/- (Rupees Twenty Five Hundred) per month to the opposite party with effect from the date of the application. The arrears of maintenance as agreed shall be paid to the opposite party after the petitioner receives his salary from his employer.

Once the salary of the petitioner is regularized, the Drawing and Disbursing Authority of the petitioner shall ensure that a sum of Rs. 2500/- (Rupees Twenty Five Hundred) is deducted per month from his salary as and when payable and the same be remitted to the account of the opposite party.

This application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

