

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.743 of 2018

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

=====

Ajay Kumar Barnwal, Son of Sri Kedar Prasad Barnwal, Resident of Mohalla- Bihar Colony, Chas Police Station- Chas District- Bokaro Jharkhand.

... .. Petitioner/s

Versus

Smt. Shubh Laxmi Bharti @ Dolly Kumari, Wife of Ajay Kumar Barnwal, D/o Sri Satyanarayan Barnwal, Resident of Mohalla- Durbiniya, Police Station- Chandan, District- Banka (Bihar).

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr.Kaushal Kishore, Advocate
For the Opposite Party	:	Mr. Siyaram Shahi, Advocate
		Mr.Priyank Samdarshi, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 30-08-2022 Heard Mr. Kaushal Kishore, learned counsel for the petitioner and Mr. Siyaram Sahi, learned counsel assisted by Mr. Priyank Samdarshi, learned advocate on record for the opposite party no.2.

Petitioner in this case is aggrieved by and dissatisfied with the judgment/order dated 24.04.2018 passed by the learned Principal Judge, Family Court, Banka in Misc. Case No. 99/2014 and Tr.No.277/2018 whereby and whereunder the learned Principal Judge has been pleased to direct the petitioner to pay a sum of Rs.15,000/- per month as maintenance allowance to the opposite party from the date of filing of the application i.e. 13.08.2014 and further directed to pay the due



maintenance amount in six equal installments within a year.

Learned counsel for the petitioner submits that he does not dispute that the opposite party no.2 is his wife. The petitioner is serving in Air Force and is likely to retire after one year. It is his submission that at this stage his basic salary is Rs.44,100/- and the gross entitlement comes to Rs.67,198/-.

Learned counsel submits that because of the matrimonial discord the petitioner filed a divorce suit giving rise to Title Suit (MAT) No.323 of 2015. The said matrimonial suit has been dismissed on 29.08.2018 but during the pendency of the said suit an interim order under Section 24 of the Hindu Marriage Act was passed whereunder the petitioner was directed to pay a sum of Rs.6,000/- per month as ad-interim maintenance.

Learned counsel further submits that the opposite party no.2 had filed a complaint case bearing no.382 of 2014 for the offence alleged under Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. In the said case when the petitioner moved this Court in Cr.Misc.No. 18519 of 2015 for grant of anticipatory bail, a learned coordinate Bench of this Court vide its order dated 04.09.2015 directed the petitioner to deposit a sum of Rs.4,000/- per month in the



learned court below which was ordered to be released in favour of the complainant.

Learned counsel submits that the opposite party no.2 had filed a maintenance case under Section 125 Cr.P.C. being Misc. Case No.99 of 2014 seeking maintenance of Rs.15,000/- per month. The learned Principal Judge, Family Court has allowed the maintenance case directing the petitioner to pay a sum of Rs.15,000/- per month with effect from 13.08.2014 i.e. the date of filing of the application.

Attention of this Court has been drawn towards the discussions made in the impugned order wherein the learned Principal Judge, Family Court was informed that the petitioner is paying a sum of Rs.4,000/- and Rs.6,000/- respectively by virtue of the order passed by the Hon'ble High Court and the learned Principal Judge in the two different proceedings. It is his submission that the salary slip of the petitioner was exhibited and the learned Principal Judge found that the total salary of the petitioner is Rs. 57,320/-, but he recorded that the petitioner is depositing Rs.28,000/- per month in his provident fund account. This, according to learned counsel for the petitioner, is an error of record inasmuch as the learned Principal Judge, Family Court had no material before him to take a view that the petitioner was



depositing a sum of Rs.28,000/- in the provident fund account.

It is submitted that in any case while considering the application under Section 125 Cr.P.C., the learned Principal Judge, Family Court, Banka should have given due regard to the amount which were being paid by the petitioner to opposite party no.2. The court has, however completely missed out on this aspect and awarded a sum of Rs.15,000/- per month with effect from the date of filing of the application. Learned counsel submits that as a result of this order, the petitioner who has the gross entitlement of Rs.67,198/- out of which he contributes only Rs.10,000/- towards provident fund subscription and after payment of the income tax, maintenance to his wife and other debits, the total gross deductions come to Rs.57,330/- leaving a paltry sum of Rs.9868/- only in the hand of the petitioner. The petitioner is paying as on today Rs.29,800/- to his wife and the same is being deducted from his salary which is causing hardship to him.

Mr. Siyaram Sahi, learned counsel assisted by Mr. Priyank Samdarshi, learned advocate on record represents the opposite party no.2. He has taken a reasonable plea saying that this Court may not interfere with the impugned order considering that the petitioner has a basic salary of Rs.44,000/-



approximately. Learned counsel submits that he is conscious of the fact that the petitioner is paying Rs.4,000/- under the order of the Hon'ble High Court and he has paid Rs.6,000/-as ad-interim maintenance under Section 24 of the Hindu Marriage Act and these two amounts are definitely adjustable against the total amount receivable by the opposite party no.2 so far.

Learned counsel submits that the opposite party no.2 would be satisfied if the maintenance at the rate of Rs.15,000/- per month (cumulative of all) be paid to her with effect from 13.08.2014. It is submitted on a rough calculation that from August, 2014 to August, 2022 the opposite party no.2 would be entitled to get a total sum of Rs.14,40,000/-. She would give adjustment of the entire amount paid to her so far by and on behalf of the petitioner and would not claim separate amount which have been allowed earlier in two different proceedings.

Learned counsel for the petitioner also agrees with the same.

In the given facts and circumstances since the parties have resolved their dispute amicably in course of argument of this case, this Court finds no reason to interfere with the impugned judgment.

As agreed, let the entire amount due to the opposite party no.2 in terms of the judgment dated 24.04.2018 passed by



the learned Principal Judge, Family Court, Banka in Maintenance Case (Misc. Case No.99/2014) be calculated and the total amount paid to the opposite party no.2 so far under different orders of the court be adjusted against the due amount. If any amount remains to be paid, the same shall be paid by the petitioner in twelve equal monthly installments. The petitioner shall continue to pay the current maintenance in terms of the impugned judgment. If it is found that the opposite party no.2 has received excess amount, adjustment thereof shall also be given to the petitioner against the future claims of the opposite party no.2.

This application stands disposed of with the aforesaid observations and directions.

(Rajeev Ranjan Prasad, J)

arvind/-

U			
---	--	--	--

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'.

