

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.773 of 2018

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

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Gopal Kumar Son of Rajandhari Rai, Resident of Village- Gulamali Chak,
P.S.- Bihta, District- Patna.

... .. Petitioner

Versus

1. State Of Bihar
2. Nilam Kumari, Daughter of Surendra Prasad Yadav, Resident of Village-
Rice Tola, Barewa Bigha, P.S.- Pakari Barawan, District- Nawada.

... .. Opposite parties

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Appearance :

For the Petitioner	:	Mr.Kamlesh Prasad Yadav, Advocate
For the State	:	Ms.Dr. Indihar Kumari, APP
For the OP No. 2	:	Mr. Suresh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 23-08-2022 Heard learned counsel for the petitioner and learned
counsel for the O.P. No. 2.

The petitioner in the present case is aggrieved by and dissatisfied with the order dated 20.04.2018 passed by learned Principal Judge, Family Court, Nawada in Misc. Case No. 20 of 2017 whereby and whereunder he has passed an ex-parte order under Section 125 Cr.P.C. directing the husband-petitioner to pay a sum of Rs.8,000/- to his wife-O.P. No. 2 w.e.f. the month of April, 2018.

Learned counsel for the petitioner submits that the petitioner has filed a matrimonial case under Section 9 of the Hindu Marriage Act for restitution of his conjugal rights. In the said case, the O.P. No. 2 has yet not appeared.



It is further submitted that the petitioner is an unemployed person and he is also landless. It is his submission that earlier a *panchayat* was held on 11.04.2014 before the Mukhiya and Sarpanch of the Anandpur *panchayat* and the *panchnama* was also issued which has been enclosed as Annexure '2'.

Learned counsel submits that the learned court below has allowed the maintenance case in absence of there being any opposition. It is lastly submitted that the petitioner being husband of the O.P. No. 2 is ready to maintain her but so far as the impugned judgment is concerned, the quantum of maintenance fixed is highly excessive and not commensurate to the income of the petitioner.

Earlier after hearing the parties, this Court vide its order dated 06.07.2022 directed the Circle Officer, Bihta to personally inspect the place of the petitioner where he is said to be running a *Atta Chakki* and submit a report to this Court with regard to the land in respect of which the petitioner is in possession and his other source of income. The Circle Officer has reported that this petitioner is unemployed. In the partition, he has got one room in old house of his father and two kathas of agricultural land. Before partition, there existed one *Atta*



Chakki which was being run by father of the petitioner but it is not existing at present.

The O.P. No. 2 has filed a counter affidavit. It is submitted that the Family Court, Nawada had issued summon to the petitioner, through court process as well as by registered post for appearance but in spite of that he did not appear. It is submitted that the petitioner sent a photocopy of the petition being Case No. 55 of 2017 through speed post which shows that he was duly aware of the present case. It is, thus, the submission of the O.P. No. 2 that the learned court below had rightly fixed the case for ex-parte hearing. Copy of the counter affidavit has though been served upon learned counsel for the petitioner but no rejoinder to the same has been filed in opposition.

In paragraph '6' of the counter affidavit, it is stated that this petitioner has performed a second marriage in the year 2020 and the Rajaswa Karamchari, Bihta Circle, Patna has informed to the father of the answering opposite party that as per Register II, the petitioner's father and his brothers are having 11 acres 33 decimals of land in Mauza-Devkuli and Anandpur. Lands are in the name of forefathers of the petitioner also. The photocopy of the Jamabandi Register has been enclosed as Annexure 'A'. Again, there is no opposition to this



statement made in the counter affidavit of O.P. No. 2.

Having regard to the facts and circumstances of the case and the materials available on the record, this Court finds that there is some dispute with respect to the exact quantum of income of the petitioner but this much is clear from the records that the opposite party no. 2 has no independent income whereas the petitioner has got some agricultural land and he is engaged in agricultural activities.

This Court, therefore, takes a view that to balance the interest of the parties a sum of Rs.6,000/- would be a reasonable amount as maintenance to the O.P. No. 2. The impugned order is, thus, modified to the extent that in place of Rs.8,000/- per month the petitioner shall pay a sum of Rs.6,000/- per month to the opposite party no. 2 with effect from the date indicated in the order of the learned Principal Judge, Family Court, Nawada.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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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'.

