

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.435 of 2018

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

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Ajay Kumar Sharma, S/o Rajniti Sharma, R/o Mohalla- Janki Ballav Kunj,
Tulsi Bari, Ayodhya Pargana Haweli Awadh Tahsil Sadar, P.S.- Kotwali,
Ayodhya, District- Faizabad.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ranjana Devi, W/o Ajay Kumar Sharma, D/o Late Bishundeo Singh, R/o
Vill.- Naya Gaon, P.S.- Naya Gaon, District- Begusarai.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Sandip Kumar Gautam, Adv.
For the State	:	Mr.Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 05-07-2022 Heard learned counsel for the petitioner and learned
APP for the State.

Although, the opposite party no.2 has entered
appearance through Mr. Jay Prakash Sharma, learned advocate
whose name is printed on the cause list but neither yesterday nor
today the opposite party no. 2 has been represented.

Petitioner is aggrieved by and dissatisfied with the
order dated 08.01.2018 passed by the learned Principal Judge,
Family Court, Begusarai in Maintenance Case No.107M of
2008 dated 23.12.2008 whereby and whereunder the learned
Principal Judge, Family Court, Begusarai has been pleased to
direct the petitioner to pay the maintenance amount to the



opposite party no.2 as per the order dated 21.06.2010 passed by the learned Principal Judge, Family Court, Begusarai.

Learned counsel for the petitioner submits that the applicant-wife is herself earning by way of teaching in a private school. It is further submitted that the learned Principal Judge, Family Court, Begusarai while passing the impugned order has raised a doubt over the enquiry report of the police which the Court should not have done in its jurisdiction. Learned counsel submits that the criminal case is still pending at Ayodhya and Begusarai court and such observation of the Principal Judge, Family Court is likely to prejudice the case of the petitioner.

Learned APP for the State has opposed this application. It is submitted that in the learned court below no evidence could be produced on behalf of the petitioner to show that the applicant-wife had entered into a second marriage with one Amit Sharma. In want of any evidence to that effect, learned court below has rightly come to a conclusion that the petitioner would be liable to pay maintenance to his wife in terms of the order dated 21.06.2010. It is further pointed out that as regards the engagement and earning of the wife in any school at Begusarai no evidence was led and, therefore, that is not a part of the consideration in the impugned order.



Having heard learned counsel for the petitioner and learned APP for the State, this Court is of the considered opinion that the learned Principal Judge, Family Court, Begusarai has exceeded his jurisdiction in raising a doubt over the police enquiry report. The Court was not bound by the police report, hence it should have recorded a finding of its own on the basis of the evidences which were led in the present proceeding.

Be that as it may, this Court finds that for the said reason alone the impugned order cannot be set aside. The applicant was awarded a maintenance in the year 2010 which was discontinued some time in the year 2013-14 because the present petitioner and his wife had entered into a compromise but the compromise later on failed and at the instance of applicant-wife again order was passed to continue the payment on account of maintenance. The order dated 21.06.2010 and the subsequent order by which the present petitioner was asked to continue to pay the said amount had attained finality.

So far as the impugned order is concerned, that has been passed after taking a prima-facie view that the petitioner had failed to produce any evidence to show that his wife had entered into a second marriage.

This Court has no material before it to take any other



view.

The submission of learned counsel for the petitioner that his wife is having independent earning from teaching in a school and she can maintain herself from that earning could not impress this Court in the present proceeding because no evidence to that effect was led in the learned court below. This Court, therefore, refuses to interfere with the impugned order leaving it open to the petitioner to seek his remedy in the learned court below by filing an appropriate application with materials for purpose of alteration/modification of the order. If such an application is filed on behalf of the petitioner, the same will be considered in accordance with law after affording appropriate opportunity to the wife of the petitioner.

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'.

