

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1184 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Siwan

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Dharmendra Dubey S/o Mohan Lal Dubey Resident of village and P.O.-
Asaon, P.S.- Asaon, District- Siwan, at present Wireless Department, Central
Reserve Security Force, Gaya, B Batalian, CRPF, Gaya

... .. Petitioner

Versus

1. The State of Bihar
2. Smt. Prabha Devi W/o Dharmendra Dubey, D/o Late Ram Kailash Pandey
R/o village and P.O.- Asaon, P.S.- Asaon, District- Siwan, at present R/o
village- Khap Dhanauti, P.S.- Raghunathpur, District- Siwan

... .. Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Ravindra Nath Dubey, Advocate
For the State	:	Mr. Navin Kumar Pandey, APP
For O.P. No. 2	:	Mr. Vishwajeet Kumar Mishra, Advocate Mr. Aakash, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 28-11-2022 Heard learned counsel for the petitioner and learned
counsel for the opposite party no. 2.

Petitioner in this case is aggrieved by and dissatisfied
with the order dated 14.05.2019 passed by learned Principal
Judge, Family Court, Siwan in Maintenance Case No. 105 of
2003 by which the petitioner has been directed to pay Rs.
10,000/- per month as maintenance to the applicant-wife, the
learned Family Court has, however, further directed that the
salary of the applicant-wife as a block teacher amounting to Rs.
7,000/- shall be adjusted against the maintenance amount and
therefore, the petitioner shall be liable to pay Rs. 3,000/- per
month.



Learned counsel for the petitioner submits that on perusal of the impugned order itself, it would appear that in the learned Family Court, Siwan, the applicant-wife admitted that she was working as a teacher in a government school. She did not produce her salary slip in the learned Family Court but the Family Court acted on the basis of surmises and conjectures and recorded that the applicant-wife is possibly getting Rs. 7,000/- per month as salary since the year 2011. Learned counsel submits that it is true that for the period May, 2003 to December, 2010, the applicant-wife was not working as a teacher but what would be maintenance amount for that period may be determined by the learned Family Court only after taking into consideration the income of the petitioner at the relevant time.

Learned counsel submits that the learned Family Court has not at all considered this aspect of the matter and has wrongly assessed the income of the applicant-wife as Rs. 7,000/- per month. It is submitted that the applicant-wife is a regular teacher in the pay scale.

Learned counsel for the Opposite Party No. 2 has, however, disputed the submission of the learned counsel for the petitioner. It is stated that the opposite party no. 2 is working on



contract basis and is contractual teacher, however, it is not denied that presently her monthly income is not less than Rs. 27,000-28,000/- per month.

Having heard learned counsel for the petitioner and learned counsel for the Opposite Party No. 2, this Court is of the considered opinion that the learned Family Court, Siwan has not correctly appreciated the case of the parties and the materials available on the record. In all fairness, the learned Family Court was obliged to assess the income of the petitioner during the period May, 2003 and December, 2010 based on which the petitioner would have been made liable to pay the maintenance amount for the period during which his wife (O.P. No. 2) was not engaged as a teacher.

For the period since 2011 since the applicant was herself engaged as a teacher and she was earning salary, she was obliged to produce the salary slip and cogent evidences to show her income as a government teacher. The Family Court is not justified in proceeding to assume that her income was possibly Rs. 7,000/- per month.

Learned counsel for the petitioner has, thus, made out a case for interference with the impugned judgment. The impugned judgment is set aside and the matter is remitted to the



court of learned Principal Judge, Family Court, Siwan for a fresh consideration.

Needless to say that the learned Family Court shall proceed to consider the case keeping in view the judgment of the Hon'ble Supreme Court in the case of **Rajnesh Vs. Neha** reported in **(2021) 2 SCC 324** wherein detail guidelines have been issued.

This application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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