

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.429 of 2019

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

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Santosh Kumar Son of Bharat Sah, Resident of Village- Sursand Cinema Road, P.S.-Sursand, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Anita Devi Wife of Santosh Kumar, Daughter of Ram Pragas Purve, Resident of Village-Sursand Cinema Road, P.S-Sursand, District-Sitamarhi. At preset Residing at Village-Chhtauna, P.S-Piprahi, District- Sheohar.
3. Golu Kumar Son of Santosh Kumar, Resident of Village-Sursand Cinema Road, P.S- Sursand, District- Sitamarhi. At preset Residing at Village-Chhtauna, P.S-Piprahi, District-Sheohar.
4. Isha Kumari Daughter of Santosh Kumar, Resident of Village- Sursand Cinema Road, P.S- Sursand, District- Sitamarhi. At preset Residing at Village- Chhtauna, P.S- Piprahi, District- Sheohar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashhar Mustafa, Advocate
For the Respondent/s : Mr. Binod Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 19-04-2023

Heard learned counsel for the petitioner and learned counsel for the State.

Counsel for the private opposite party has appeared through vakalatnama as per office notes dt. 13.05.2019. He has received the copy of the petition from counsel for the petitioner but today not appear before this Court to defend the stand of private opposite party.

Counsel for the petitioner submits that the present criminal revision application has been filed for setting aside the

order dated 17.01.2019 passed in Misc. Case No. 09 of 2013, by which the Principal Judge, Family Court, Sheohar has allowed the petition dated 12.04.2013 under Section 125 of Cr.P.C. and directed the petitioner to pay Rs.4000/- per month to his wife and Rs.3000/- per month each to his two children, both as maintenance amount. Counsel for the petitioner further submits that as per the ascertainment of the earnings of the petitioner, the petitioner has no income of Rs.22,000/- per month which the trial court has ascertained on the basis of the material of opposite party. Counsel further submits that there are two ascertainment made by the court. The first assertion is on the basis of the evidences of opposite party the earning is Rs.22,000/- and on the basis of the materials of the petitioner before the trial court, the earning is Rs.5000/-. Counsel further submits that without reaching on a conclusion that what actual amount petitioner is earning per month, court has fixed the maintenance amount directly Rs.4000/- for the wife and Rs.3000/- to each of the children. Counsel further submits that his wife is left him without any reasonable excuse and only on false allegation of torture and deprived him from the love and affection of family including his children. Counsel further submits that it is admitted that petitioner is the husband having

two children and therefore, he is ready to fulfill the liability but there are financial constraint with him and only on this ground of financial constraint, he requests to this court that ascertainment of his earning is not correct and he humbly request to interfere in the decisions.

Counsel for the State submits that from the evidence it has come that the petitioner have shop relating to sweets and he used to pay the income tax from the earning of said shop. It has also submitted that the Case under Section 498A of I.P.C. is pending in which negotiation for final settlement is going on.

Upon repeated call, no one appears on behalf of private respondent.

In the above facts and circumstances, this court has reached on this opinion that the amount which is fixed for payment of two children i.e. Rs.3000/- per month each is appropriate and there is no need of any interference in the same but considering the income of the petitioner, this court is only decreasing the amount payable to the wife of petitioner from Rs.4000/- to Rs.2000/-. Accordingly, the present Criminal Revision Application is allowed only up to that extent and order passed by the Principal Judge, Family Court, Sheohar vide order

dated 17.01.2019 in Misc. Case No. 09 of 2013 is hereby modified up to that extent, as O.P. has every scope for final settlement in Case under Section 498A of I.P.C..

It has been argued by counsel for the petitioner that specific direction for installment may be given to the petitioner, so that he may pay the said amount of arrear in easy installments. He is directed to file an application before the Principal Judge, Family Court, Sheohar for installment and Principal Judge, Family Court is directed to fix the arrear amount in ten equal installments after every three months.

With this direction, the present Criminal Revision Application is hereby partly allowed.

(Dr. Anshuman, J.)

ravishankar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	