

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.896 of 2017

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

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Umesh Prasad Singh S/o Mahendra Narain Singh, resident of Rajapul,
Mainpura, Post - Sadaquat Asharam, P.S. Patliputra, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. Smt. Sapna Kumari, D/o Kranti Singh, resident of At and Post Office-
Sanhauli, District- Khagaria.
3. Sheel @ Shivalika Rathore, aged about 20 years, D/o Sapna Kumari,
resident of At and Post Office- Sanhauli, District- Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siddhartha Prasad, Adv. With
	:	Mr. Shashi Shekhar Prasad, Adv.
For the Respondent/s	:	Mr. Sri Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 28-04-2023

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

The present application has been filed for setting
aside the order dated 30.05.2017 passed by Learned Principal
Judge, Khagaria in Maintenance Case No.7MF/2006 which was
filed under Section 127 of the Cr.P.C.,1973 whereby and
whereunder composite order dated 28.02.2017 passed in
Maintenance case no. 7MF of 2006 and Maintenance case No.
16 M of 2005 has been confirmed wherein petitioner was
directed to make payment of Rs.15,000/- by 15th day of every

month from March, 2017 in lieu of maintenance to the O.P. no.3. It was also ordered that petitioner shall deposit Rs. 10 lacs in savings account for meeting the expected expenses in the marriage of O.P. No.3. In furtherance of this, petitioner was also prayed for quashing the composite order dated 28.02.2017. It was also prayed that the direction may be given to DNA test of O.P. no.3 at the cost of petitioner so as to determine the paternity of O.P. no.3 and to do the substantial justice. During pendency of this application, the proceeding was also prayed to be stayed.

Counsel for petitioner submits that prior to passing the order dated 30.05.2017 under Section 127 of Cr.P.C., the interim order has been passed in favour of petitioner but both the orders have been challenged by the present criminal revision no. 896 of 2017. On the question of legality, correctness and propriety, counsel for petitioner has raised no objection but submits that the interest of justice that demands DNA testing as the O.P. no.2 is not his wife and O.P. no.3 is not his daughter.

Counsel further submits that his earning is not Rs.17,000/- per month and therefore, fixing of Rs,15,000/- maintenance to O.P. no.3 (daughter of petitioner) is excessive and according to the petitioner, the said amount cannot be more

than 25% of the acceptable pension i.e. 25% of Rs.17,000/- only. As per the judgment of the Hon'ble Supreme Court in Cr. Appeal No. 5369 of 2017 (Kalyan Dey Chowdhury Vs. Rita Dey Chowdhury Nee Nandy).

Counsel for State submits that the petitioner has challenged two orders i.e. order dated 28.02.2017 passed in Maintenance Case No. 7MF of 2006 as well as order dated 30.05.2017 in Maintenance Case No. 7MF of 2006. Counsel submits that he ought to confine his prayer relating to one relief.

It transpires to this Court that order dated 28.02.2017 is order of interim maintenance in favour of the O.P. and subsequently, order dated 30.05.2017 is the order passed under Section 127 of Cr.P.C. i.e. order of enhancement of maintenance. It transpires that the petitioner was working as Jail Superintendent and retire from the post of Jail Superintendent in the month of February, 2016 and he is getting pension of Rs.35,000/- per month therefore, Court has ordered to pay Rs.15,000/- to the daughter for her maintenance. It is also important that at the time of passing order under Section 127 of Cr.P.C.. It has been acknowledged by the Court that from the salary slip, it transpires that the petitioner is getting Rs.35,000/- per month as salary and therefore, his pension is Rs.75,000/- per

month. It has also been acknowledged by the Court that there are huge amount of arrears against the petitioner which ought to be paid but he has not paid and started continuing the litigation. It has also been mentioned that the petitioner was working as Jail Superintendent at Shekhpura from March, 2015 to February, 2016 and his monthly salary was Rs.60,000/- per month.

This Court upon considering the parties, has decided the matter in favour of the O.P. no.3 holding that due to inaction on the part of the petitioner, the order under Section 125 of Cr.P.C. which ought to be closed within 2 months, has not been closed even in 11 years. It has also come that petitioner has entered into second marriage with whom he has a daughter also. Counsel submits that this Court ought to interfere in the said decision.

This Court upon going through the materials, has found subsistence in the arguments of the petitioner that at the time of passing order under Section 127 of Cr.P.C., Court has not considered any material therefore, the order dated 30.05.2017 passed under Section 127 of Cr.P.C. is hereby set aside and the Trial Court is directed to hear the application under Section 127 of Cr.P.C. within 3 months from the date of passing of the order.

On the order hand, this Court also directed that the order interim which is of 28.02.2017 is hereby affirmed and Principal Judge, Family Court, Khagaria is directed to comply the interim order and take all steps to realize the same in the light of **Sarfaraj Alam @ Md. Sarfaraj Vs. State of Bihar & Ors.** reported in **2023(1) PLJR 756.**

With this direction, this Cr. Revision Application is partly allowed and partly dismissed.

(Dr. Anshuman, J.)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	