

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.736 of 2018

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

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Gitanjali Devi @ Gitanjali Kumari Wife of Ajay Kumar, D/o Bal Kanhaiya Prasad, Resident of Mohalla- Mitra Chouk Gate No.2, Hospital Road, P.S.- Bettiah Town, District- West Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ajay Kumar, Son of Raghav Prasad, R/o at present Mohalla- C/o Chaudhary Banshi Market G-30, Main Harikesh Nagar, P.S.- Okhala, New Delhi, Permanent address- Village- Rampurva, P.S.- Malahi, District- East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vipin Kumar, Advocate
For the State	:	Mr. Akhileshwar Dayal, APP
For the O.P. No.2	:	Ms. Prem Sheela Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

12 02-12-2023 Heard learned counsel for the parties.

2. Petitioner is aggrieved by and dissatisfied with the order dated 31.03.2018 passed by learned Principal Judge, Family Court, West Champaran, Bettiah in Maintenance Case No.79M/2011 whereby and whereunder the learned Principal Judge has been pleased to direct the opposite party no.2 to pay a sum of Rs.1000/- as maintenance amount per month to his wife who is petitioner before this Court.

3. Mr. Vipin Kumar, learned counsel for the petitioner submits that on a bare perusal of the impugned order it would appear that the learned Family Court has fixed the maintenance

amount in the year 2018 on the basis of the entries available in the bank account of the petitioner till the year 2008. The court has recorded that it was the duty of the petitioner to establish the income of the opposite party but she failed. Learned counsel submits that the impugned order has not been passed in accordance with law by following the procedures which are required to be followed by virtue of the judgment of the Hon'ble Supreme Court in the case of **Rajnesh versus Neha & Another** reported in **(2021) 2 SCC 324**. No affidavit was called for from the parties and no declaration of the income were taken.

4. It is submitted that the said judgment in the case of **Rajnesh** (supra) has been followed recently by the Hon'ble Supreme Court in the case of **Aditi Alias Mithi Vs. Jitesh Sharma (Criminal Appeal No. 3446 of 2023)**.

5. Learned counsel for the opposite party no.2 has opposed this application. It is submitted that the opposite party no.2 was working as an Assistant at Batra Hospital, Delhi and at the relevant time he was getting a salary of about Rs.750/- only per month. It is submitted that after the matrimonial discord took place, because of the complaint lodged by the petitioner, the hospital management ousted the O.P. no.2 from service and thereafter he has not got any job. It is further submitted that, on

the other hand, during this period the petitioner has pursued her studies in law and has joined the local court at Bettiah as an advocate in the year 2019. She is herself earning and in such circumstance the petitioner is not entitled for any maintenance.

6. Having heard learned counsel for the parties and on perusal of the records, this Court finds that in the court below the applicant-petitioner did not submit any proof of income of her husband. Her husband (opposite party no.2) filed his salary details and the bank account of the Oriental Bank of Commerce, New Delhi from which it appears that he was employed at Batra Hospital, Delhi in 2008 and was getting Rs.7524/- as salary till May, 2008. On the face of the discussions made in the impugned order, this Court has no doubt that the court has not followed the procedures which were mandated by the Hon'ble Supreme Court in its judgment in the case of **Rajnesh** (supra). In paragraph '72' of the said judgment the Hon'ble Supreme Court has issued the following directions:-

“72. Keeping in mind the need for a uniform format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, this Court considers it necessary to frame guidelines in exercise of our powers under Article 136 read with Article 142 of the Constitution of India:

72.1. (a) The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this

judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrate's Court concerned, as the case may be, throughout the country;

72.2. (b) The applicant making the claim for maintenance will be required to file a concise application accompanied with the Affidavit of Disclosure of Assets;

72.3. (c) The respondent must submit the reply along with the Affidavit of Disclosure within a maximum period of four weeks. The courts may not grant more than two opportunities for submission of the Affidavit of Disclosure of Assets and Liabilities to the respondent. If the respondent delays in filing the reply with the affidavit, and seeks more than two adjournments for this purpose, the court may consider exercising the power to strike off the defence of the respondent, if the conduct is found to be wilful and contumacious in delaying the proceedings [*Kaushalya v. Mukesh Jain*, (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915] . On the failure to file the affidavit within the prescribed time, the Family Court may proceed to decide the application for maintenance on the basis of the affidavit filed by the applicant and the pleadings on record; **72.4. (d)** The above format may be modified by the court concerned, if the exigencies of a case require the same. It would be left to the judicial discretion of the court concerned to issue necessary directions in this regard.

72.5. (e) If apart from the information contained in

the Affidavits of Disclosure, any further information is required, the court concerned may pass appropriate orders in respect thereof. **72.6. (f)** If there is any dispute with respect to the declaration made in the Affidavit of Disclosure, the aggrieved party may seek permission of the court to serve interrogatories, and seek production of relevant documents from the opposite party under Order 11 CPC. On filing of the affidavit, the court may invoke the provisions of Order 10 CPC or Section 165 of the Evidence Act, 1872, if it considers it necessary to do so. The income of one party is often not within the knowledge of the other spouse. The court may invoke Section 106 of the Evidence Act, 1872 if necessary, since the income, assets and liabilities of the spouse are within the personal knowledge of the party concerned.

72.7. (g) If during the course of proceedings, there is a change in the financial status of any party, or there is a change of any relevant circumstances, or if some new information comes to light, the party may submit an amended/supplementary affidavit, which would be considered by the court at the time of final determination.

72.8. (h) The pleadings made in the applications for maintenance and replies filed should be responsible pleadings; if false statements and misrepresentations are made, the court may consider initiation of proceeding under Section 340 CrPC, and for contempt of court.

72.9. (i) In case the parties belong to the economically weaker sections (“EWS”), or are

living below the poverty line (“BPL”), or are casual labourers, the requirement of filing the affidavit would be dispensed with.

72.10. (j) The Family Court/District Court/Magistrate's Court concerned must make an endeavour to decide the IA for interim maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.

72.11. (k) A professional Marriage Counsellor must be made available in every Family Court.”

7. The aforesaid judgment in the case of **Rajesh** (supra) has been recently reiterated in the case of **Aditi Alias Mithi** (supra).

8. This Court is of the considered opinion that the impugned order is liable to be set aside for the reason that it has not followed the procedures prescribed by the Hon’ble Apex Court.

9. The impugned order is, accordingly, set aside and the matter is remitted to the court of learned Principal Judge, Family Court, West Champaran, Bettiah for fresh consideration and by following the procedures which are laid down in the judgment of the Hon’ble Supreme Court.

10. The parties shall be given an opportunity to file their respective affidavits and pleadings within a reasonable period.

11. Learned counsel for the opposite party no.2 says that because the petitioner is an advocate practicing in the Bettiah court, the opposite party no.2 is not getting a lawyer of his choice perhaps for the reason that no lawyer is willing to work against his/her colleague. If it is so, the learned Principal Judge, Family Court shall request the legal aid lawyer to represent the opposite party no.2.

12. This application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

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