

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.135 of 2017

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

Abhishek Kumar Singh

... .. Petitioner/s

Versus

State Of Bihar and Anr

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vinod Gautam, Adv.

For the Respondent/s : Mr. Sri Ashok Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 20-04-2023

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

This present revision petition has been filed for setting aside the judgment/order dated 20.09.2016 passed in Maintenance Case No.108 of 2011 by which it was directed to the petitioner to pay Rs.5,000/- per month to O.P. No.2 which are due w.e.f. 20.09.2016 and there was also direction to make payment of Rs.2,000/- per month w.e.f. 06.04.2011 to 31.08.2016 as maintenance amount along with Rs.10,000/- as cost of litigation.

Counsel for petitioner submits that O.P. No.2 has already filed a criminal case against the petitioner and at the time of granting anticipatory bail and Hon'ble Court has directed to pay Rs2,000/- per month which he is continuously

paying to the petitioner from the date of the order i.e. on 25.10.2011.

Counsel for O.P. No.2 submits that except Rs.2,000/- per month, nothing was paid. Counsel for O.P. No.2 submits that according to him, the petitioner after payment of Rs.2000/- per month for few months, has stopped the said amount also.

Counsel for petitioner is not in a position to show any document to this Court by which it become clear that the said Rs.2,000/- are being paid. After going through the submissions and the pleadings made in their petitions, it transpires to this Court that petitioner was directed to pay Rs.2,000/- to the O.P. No.2 with effect from 25.10.2011 till date, as per order passed in bail petition. In this way, the total due amount is 140 months x Rs.2000/- = Rs.2,80,000/-. It also transpires from the order under challenge that Court has granted interim maintenance of Rs.2,000/- per month which are due against the petitioner with effect from 06.04.2011 to 31.08.2016. In this way, the total due is Rs.1,20,000/- towards interim maintenance.

As per the Court's order under Section 125 of Cr.P.C., petitioner was entitled to make payment of Rs.5,000/-

per month with effect from 1st September, 2016 that comes to the tune of 80 months i.e. 80 months x Rs.5,000 =Rs.4,00,000/-.

As such it transpires to this Court that total dues amount towards payment of maintenance under Section 125 of Cr.P.C. is Rs. 4,00,000 + 1,20,000 =5,20,000/- whereas the petitioner is directed to pay in the light of anticipatory bail order Rs.2,80,000/-. It is well settled notion of law that when maintenance has been allowed under two different laws then, for the purpose of payment , adjustment of those two maintenance shall be made by way of set off.

In this view of the matter, petitioner is entitled to make payment of total Rs. 5,20,000 - 2,80,000 = 2,40,000/-. This is the arrears which the petitioner is entitled to pay, upon adjustment of payment under bail and payment under Section 125 of Cr.P.C. maintenance, the payable figure shall only be Rs.5,000/- and not Rs.7,000/- inclusive payment under bail order and payment under Section 125 of Cr.P.C.. As such the total payment amount comes to the tune is Rs.2,40,000/- and current amount Rs.5,000/- as maintenance inclusive payment under bail order.

This order is modified only on the ground of payment of amount. If petitioner is entitled to show before the

Principal Judge, Family Court, East Champaran at Motihari that he has already paid in the account of the O.P. No.2, towards bail order. The paid amount shall be adjusted.

The Principal Judge, Family Court is directed to ascertain that what are the dues and what are the current payable amount and shall grant 30 days time to the petitioner to make payment. If he shall not make payment within 30 days from the date of production of order, the Court shall issue processes in this matter in accordance with Form 18 & 19 in Schedule II of Cr.P.C., 1973 or take any other action as available under law for the purpose of realisation of the said amount. It is directed that Principal Judge, Family Court shall follow the guideline reported in **2023(1) PLJR 756** in the case of **Sarfaraj Alam @ Md. Sarfaraj Vs. State of Bihar & Ors.**

With this direction, this Cr. Revision Application is hereby disposed of.

(Dr. Anshuman, J.)

prakashmani/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	