

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1085 of 2017

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

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1. Nitu Kumari W/o Sanjay Kumar Singh, D/o Kaladhar Prasad Singh
 2. Krishna S/o Sanjay Kumar Singh under natural guardian of mother namely Nitu Kumari W/o Sanjay Kumar Singh Both residents of Mohalla/Village - Gandhi Nagar, P.S. Khajanchi Hat, District - Purnea.

... .. Petitioners

Versus

1. The State of Bihar
2. Sanjay Kumar Singh, S/o Sheo Narayan Prasad Singh, resident of village - Mathurapur, P.O. - Khagaria, P.S. and District - Khagaria.

... .. Opposite Parties

Appearance :

For the Petitioners	:	Mr. Subodh Kumar Jha, Advocate
For the State	:	Mr. Gauri Shankar Gupta, APP
For the OPs	:	Mr. Vijay Anand, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 07-12-2023 Heard learned counsel for the petitioners and learned counsel for the opposite party no. 2.

2. The petitioners in the present case are challenging the order dated 14.07.2017 passed in Maintenance Case No. 61 of 2013 by learned Principal Judge, Family Court, Purnea to the extent that the learned Principal Judge has erred in allowing only a sum of Rs.5,000/- per month and Rs.4,000/- per month respectively to the petitioners on account of maintenance and further the court has erred in allowing the maintenance amount from the date of order and not from the date of the application.

3. After some arguments, Mr. Subodh Kumar Jha, learned counsel for the petitioners submits that at this stage, the petitioners would be contented with an order allowing the maintenance amount



w.e.f. the date of the application. He has relied upon the judgments of the Hon'ble Supreme Court in the case of **Rajnish versus Neha & Another** reported in **(2021) 2 SCC 324** and **Aditi @ Mithi versus Jitesh Sharma** reported in **2023 INSC 981: 2023 SCC Online 1451** to submit that it has been well settled by the Hon'ble Supreme Court that the maintenance is to be allowed from the date of filing of the application. In this case, the maintenance application was filed on 07.03.2013.

4. Learned counsel for the opposite party no. 2 submits that earlier, the learned Principal Judge, Family Court, Purnea had allowed an interim maintenance of Rs.8,000/- per month w.e.f. 27.10.2015 and the opposite party no. 2 continued to pay the said amount without any break. It is submitted that while passing the final order in the maintenance case, the learned Principal Judge has taken into account the salary slip of opposite party no. 2 from which it appeared that opposite party no. 2 was getting a net pay of Rs. 27,582/- only at the relevant time.

5. It is further submitted that at this stage the petitioners have filed an application under Section 127 Cr.P.C. in the court of learned Principal Judge, Family Court, Purnea which is pending consideration, therefore, this Court may not entertain any plea for enhancement of the maintenance in the present proceeding.

6. Having regard to the facts and circumstances of the case, there being an admitted position that the Maintenance Case No.



61 of 2013 was filed on 07.03.2013 and in terms of the judgment of the Hon'ble Supreme Court in the case of **Rajnesh** (supra) and **Aditi @ Mithi** (supra), the maintenance is to be allowed w.e.f. the date of filing of application, this Court is of the considered opinion that the learned Family Court has committed an error in allowing the maintenance amount w.e.f. the date of the order. The grievance of the petitioners to that extent is admissible and fit to be accepted.

7. This Court, therefore, modifies the impugned order to the extent that the maintenance amount shall be payable from the date of the application i.e. 07.03.2013. As a result of this modification, the opposite party no. 2 shall pay the difference of the amount to the petitioners in four equal installments within six months from today.

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

9. Since the 127 Cr.P.C. application is pending consideration before the learned Principal Judge, Family Court, Purnea, the same will be considered on its own merit and the Family Court shall pass an appropriate order within a reasonable period.

(Rajeev Ranjan Prasad, J)

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