

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1084 of 2017

In
Miscellaneous Appeal No.756 of 2016

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

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Sugriv Rai, Son of Late Ramchandra Rai, R/o Village-Tola Palat Rai, P.S.
Gopalpur, District-Gopalganj.

... .. Petitioner

Versus

Durgawati Devi, Wife of Sugriv Rai, D/o Late Nagendra Singh at present
resident of village-Amlori, P.S.-Siwan Muffasil, District-Siwan.

... .. Respondent

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar Pandey, Advocate
For the Respondent/s : Mr. Dhananjay Kumar Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 04-12-2023 Heard learned counsel for the petitioner and learned
counsel for the sole opposite party.

2. Petitioner in this case is aggrieved by and dissatisfied with the order of enhancement dated 30.03.2016 passed by learned Principal Judge, Family Court, Gopalganj under Section 127 of the Code of Criminal Procedure in Maintenance Case No. 18 of 2005. By the impugned order, the learned Family Court has been pleased to direct this petitioner to pay a sum of Rs. 10,000 per month with effect from the date of filing of the enhanced petition i.e. 30.01.2013.

3. Learned counsel for the petitioner has assailed the impugned order mainly on the ground that the learned Principal

Judge, Family Court, Gopalganj has wrongly recorded that the earning of the petitioner by way of salary is Rs. 42,000/- or Rs. 44,000/- per month as Rifleman in Assam Rifles. It is submitted that the petitioner has taken voluntary retirement from Assam Rifles with effect from 01.04.2013 and thereafter, he is getting a monthly pension of Rs. 11,000/- (approximately) which has been increased and at the time of passing of the impugned order, the petitioner was getting a monthly pension of Rs. 17,000/- (approximately) which has now been increased to Rs. 21,000/- (approximately).

4. It is submitted that the petitioner has got about four *bighas* of joint family land in which he has got co-sharers and therefore, the enhanced amount of Rs. 10,000/- per month is not in tune with the income of the petitioner.

5. Learned counsel for the petitioner admits that he had appeared in the court of learned Principal Judge, Family Court and had filed his rejoinder dated 15.04.2013 to the enhancement petition but later on he had abandoned the proceeding and neither examined any witness nor proved any documentary evidence in denial of the claim of the applicant. It is submitted that the petitioner is ready to pay some enhanced amount of maintenance but Rs. 10,000/- per month is a highly exaggerated

and excessive amount, which is required to be reduced.

6. On the other hand, learned counsel for the opposite party submits that this petitioner has not come clean before this Court. The opposite party is the legally wedded wife of the petitioner but the petitioner neglected her and performed a second marriage. Earlier, the learned Principal Judge, Family Court had *vide* his order dated 14.02.2008 directed the petitioner to pay a sum of Rs. 1,000/- per month to the opposite party towards maintenance. This amount was in the lower side considering that the petitioner was earning a good amount of salary being a Rifleman in the Assam Rifles but because of no financial help and lack of manpower support, the opposite party did not file any appeal against the said order. It is submitted that the petitioner did not abide by the said order and only intermittently he was depositing some amount. Pointing out to the observations made in the impugned order, it is submitted that the learned Family Judge has rightly recorded that the petitioner had not paid the maintenance amount after June, 2013 and had stopped giving maintenance allowance to the petitioner-opposite party.

7. Learned counsel submits that the conduct of the petitioner in not making payment of the maintenance amount of

a meagre sum of Rs. 1,000/- per month while the petitioner was in service and then stoppage of the same on his own will and volition after June, 2013 is required to be taken note of while considering a challenge to the impugned order in this case.

8. Learned counsel further submits that the opposite party would not oppose some reduction in the amount of maintenance awarded by the learned Principal Judge Family Court, however, the opposite party deserves a reasonable amount towards her maintenance and the entire arrears of maintenance must be paid to the opposite party with suitable interest and compensation.

9. Having regard to the facts and circumstances of the case, this Court finds that the materials available on the record are categorically showing that after June, 2013 the petitioner stopped making payment of maintenance to the opposite party. The observation of the learned Principal Judge, Family Court in the impugned order has not at all been controverted. Even in course of hearing, this Court called upon the learned counsel for the petitioner to demonstrate that he was paying the maintenance amount after June, 2013, but nothing could be brought to the notice of this Court to satisfy that payments were being made after June, 2013.

10. This Court further finds that this petitioner was in service as Rifleman in Assam Rifles. During his service period, his salary was about Rs. 42,000/-, this is an admitted position, therefore, out of Rs. 42,000/- if he was ordered to pay only Rs. 1,000/- per month and that too was not paid by him to the opposite party and he indulged in contesting the issue, the conduct of the petitioner is liable to be deprecated. Presently, the petitioner is drawing a pension amount of Rs. 21,000/- approximately, he has some cultivable land also and during his service period, he must have some investments and savings as well. Considering the admitted income of the petitioner from the pension and an admission to the effect that he has got some cultivable land also and earlier he was getting a salary of Rs. 42,000/- per month, this Court is of the considered opinion that a sum of Rs 7,000/- per month would be a reasonable amount which the petitioner must pay as maintenance to his wife (the opposite party) with effect from the date of filing of the application under Section 127 Cr.P.C. The learned Principal Judge, Family Court shall get calculated the entire arrears of maintenance payable to the sole opposite party, within a period of two weeks from the date of receipt communication of a copy of this order and appropriate order shall be passed fixing the

schedule of payment of the arrears amount in reasonable installments which the petitioner would be liable to pay together with the current maintenance of Rs. 7,000/- per month.

11. Since this Court has noticed that the petitioner stopped payment of maintenance after June, 2013 and he deprived the opposite party from getting even the meagre amount of Rs. 1,000/- per month, this Court is of the considered opinion that the petitioner is liable to pay a sum of Rs. 15,000/- as cost of litigation to the opposite party. This would be paid within a period of 30 days from today.

12. The impugned order is modified to the extent indicated herein above.

13. This revision application is disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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