

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.672 of 2018

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

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Sitaram Hansda S/o Late Kanhay Hansda, Resident of Village- Jojodih
Suliwaran, P.S.- Banka, District- Banka.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Budhani Chaure, W/o Sitaram Hansda, Resident of Village- Jojodih, P.S.-
Banka, Distt- Banka. at present residing at Nimatar, P.S.- Katoria O.P. Suiya,
District- Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajay Mukherjee

For the Respondent/s : Mr.Sri Anand Mohan Prasad Mehta

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 25-09-2023

1. The present revision application has been preferred against the order dated 11.05.2018 passed under Section 125 of the Cr.P.C. by the learned Principal Judge, Family Court, Banka in Miscellaneous Case No. 163 of 2012 / Tr. No. 16 of 2018 whereby the petitioner has been directed to pay maintenance amount of Rs. 15,000/- per month from the date of the order and further directed to pay the arrear amount of interim maintenance from 29-01-2014 in six installments. It appears from the record that this Court on the date of first hearing of this revision application was *prima facie* satisfied about the liability of the petitioner to pay maintenance to his wife / Opposite Party No. 2 while recording in its order dated 01-07-2022 that the petitioner



is not paying a single farthing to the Opposite Party No. 2 and directed the petitioner to pay at least Rs. 10,000/- per month with effect from the date mentioned in the impugned judgment before the next hearing of the matter. Again, by order dated 02.08.2022 this court directed the petitioner to pay a sum of Rs. 100000/- (rupees one lakh) in the account of the Opposite Party No. 2 before 10th August, 2022. The Court has further observed that if such deposit is made, personal appearance of the petitioner shall be dispensed with.

2. The petitioner has filed a supplementary affidavit in this case stating therein that he has paid Rs. 49,500/- on 05.08.2022, Rs. 30,500/- on 06.08.2022, Rs. 20,000/- on 08.08.2022, Rs. 40,000/- on 10.10.2022 and Rs. 10,000/- on 01.12.2022 i.e. a total a sum of Rs. 1,50,000/- [one lakh fifty thousand] has been paid in the account of Opposite Party No. 2. The petitioner has also claimed that he has paid a sum of Rs. 100000/- [one lakh] during the pendency of the maintenance application.

3. It is admitted case of the parties that both are husband and wife and marriage was solemnized about 30-31 years back. It is also admitted from the record that out of the said wedlock a daughter was born, whose name is Savitri



Hansda, who is now married and settled with her husband. It is also admitted that petitioner has solemnized second marriage from which he has two daughters. The petitioner is a Constable in Bihar Police and has accepted that his salary is Rs. 40,000/- per month. The learned Family Court has considered the evidence produced by both the parties and the fact that Opposite Party No. 2 / wife is living in her parental home for the last many years and does not have any source of income, whereas, the petitioner is a Constable in Bihar Police and earns Rs. 40,000/- per month in salary has ordered the petitioner to pay a sum of Rs. 15,000/- per month as maintenance to the Opposite Party No. 2 / wife from the date of the order and further to pay the arrear amount of interim maintenance from 29-01-2014 in six installments.

4. Learned counsel for the petitioner submits that petitioner belongs to tribal community and as per his personal law and practice petitioner can solemnize second marriage. It is also not disputed that from the second marriage of the petitioner two daughters have born and they are studying in Banka Saraswati Vidya Mandir. The petitioner has to maintain his second wife as well as two children also from his salary as such the amount of maintenance awarded by the learned Family



Court is in the higher side.

5. No body appeared on behalf of the Opposite Party No. 2 during the course of argument.

6. After having heard learned counsel for the petitioner and material available on record it is apparent that facts are not disputed. The only argument advanced by the petitioner is that petitioner has other liability of his second wife and his children also and the maintenance amount awarded shall cause hardship to the petitioner, whereas, the Opposite Party No. 2 is not residing with the petitioner for the last three decades. It is also not disputed that the petitioner did not produce his salary slip but has accepted his salary as Rs. 40,000/- per month.

7. The Hon'ble Supreme Court in a case reported in **(2021) 2 SCC 324 Rajnesh v. Neha** has held that maintenance be awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing of the application.

8. In the present case the Family Court has directed for maintenance from the date of order and not from the date of filing of maintenance application.

9. Upon careful consideration of the case of the parties and in order to strike a balance between the claim of the



Opposite Party No. 2 and the liability of the petitioner, in my opinion the Opposite Party No. 2 is entitled to be paid maintenance @ Rs. 10,000/- per month from the date of filing of the application for maintenance by her instead of Rs. 15,000/- per month awarded by the Family Court from the date of the order.

10. Accordingly, the impugned order dated 11.05.2018 passed by learned Principal Judge, Family Court, Banka in Misc. Case No. 163 of 2012 / Tr. No. 16 of 2018 is modified to the aforesaid extent. The amount calculated which has already been paid by the petitioner to the Opposite Party No. 2 shall be adjusted in total payable amount to Opposite Party No. 2 from the date of filing of the application.

11. In the result this application is disposed of and the impugned order dated 11.05.2018 passed in Misc. Case No. 163 if 2012 / Tr. No. 16 of 2018 is modified to the extent as indicated hereinabove.

(Anil Kumar Sinha, J)

praful/-A.F.R.

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	05-10-2023
Transmission Date	NA

