

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.148 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Munger

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Mukesh Kumar Mandal @ Mukesh Mandal, Son of Raj Kumar Mandal,
Resident of Village- Lal Darwaza, P.S.- Kotwali, District- Munger

... .. Petitioner/s

Versus

1. The State of Bihar
2. Suman Devi, Wife of Mukesh Kumar Mandal Resident of Nayatola Chandan Baag, P.S.- Kasim Bazar, District- Munger
3. Diwyansu Kumar, Mukesh Kumar Mandal Under guardianship of mother (i.e. Respondent No.2) Resident of Nayatola Chandan Baag, P.S.- Kasim Bazar, District- Munger
4. Maina Kumari, Mukesh Kumar Mandal Under guardianship of mother (i.e. Respondent No.2) Resident of Nayatola Chandan Baag, P.S.- Kasim Bazar, District- Munger
5. Yash Kumar, Mukesh Kumar Mandal Under guardianship of mother (i.e. Respondent No.2) Resident of Nayatola Chandan Baag, P.S.- Kasim Bazar, District- Munger

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anurag Saurav, Adv.
For the Respondent/s : Mr. Anand Kishore Choudhary, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 24-04-2024

Heard learned Advocate for the petitioner as well as
learned APP for the State.

2. The instant revision is directed against the final order
of maintenance under Section 125 of the Cr.P.C., passed in
Maintenance Case No. 46 of 2016 by the learned Principal Judge,
Family Court at Munger on 19th November, 2018, whereby and



whereunder the learned Principal Judge directed the present petitioner to pay Rs. 3,000/- (Three thousand) per month as maintenance allowance to his wife and Rs. 1,000/- (One thousand) each per month for the maintenance of three children of the parties.

3. Learned Advocate for the petitioner in support of the instant revision submits that he cannot agitate the factum of marriage between the petitioner and the opposite party. It is also not denied that the opposite party has been staying separately with her three minor children and she has no source of income. It is further submitted by the learned Advocate for the petitioner that the petitioner is under obligation to maintain his wife and children.

4. It is however submitted by the learned Advocate for the petitioner that admittedly the petitioner is a day labourer. He does not get work on each and every day in a month. Therefore, it is not financially possible for him to pay Rs. 6,000/- (Six thousand) per month to the opposite party. Accordingly, the learned Advocate for the petitioner submits that the amount of maintenance allowance may be reduced to some extent so that the petitioner can make payment of the maintenance allowance.

5. I have perused the materials on record. The opposite party in her evidence admitted in cross-examination that the



petitioner is a day labourer. There is obviously no pay slip for the day labourer to ascertain his income. In such cases, it is decided by the Hon'ble Supreme Court in *Anju Garg Vrs. Deepak Kumar Garg, reported in AIR online 2022 SC 306* that notional income of a day labourer shall be fixed on the basis of daily wages under the Minimum Wages Act.

6. In view of such direction, the daily wage of the petitioner may be held as Rs. 4,00/- per day and his notional income is Rs. 12,000/- per month. 1/3 of said notional income comes to Rs. 4,000/- and the opposite party is entitled to get Rs. 4,000/- (Four thousand) as monthly maintenance.

7. However, the learned Principal Judge, Family Court, Munger considered the issue that the petitioner is under obligation to pay maintenance for the minor children of the parties, who are now living with the opposite party. Therefore, the trial court directed the petitioner to pay Rs. 3,000/- per month to the opposite party and Rs. 1,000/- each per month for their three children, total being Rs. 6,000/-.

8. This Court is of the considered view that if, the petitioner is directed to pay Rs. 6,000/- he is required to pay towards maintenance allowance half of his notional income. Therefore, considering all the circumstances as well as the



obligation of the petitioner of maintenance, this Court directs the petitioner to pay maintenance allowance to his wife @ Rs. 2500/- (Two thousand five hundred) per month and further Rs. 25,00/- (Two thousand five hundred) per month for the maintenance of three children of the parties, total being Rs. 5,000/- (Five thousand) per month.

9. The amount of maintenance is thus altered directing the petitioner to pay maintenance allowance @ Rs. 5,000/- (Five thousand) per month from the date of filing of the application. All other directions passed by the trial court shall remain enforce.

10. With the above order, the instant criminal revision is disposed of.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

