

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.132 of 2023**

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Jaffir Alam @ Md. Jafir Alam S/o Late Manjur Alam, Resident of Village-
Bajochak, P.S.- Narhat, District- Nawada.

... .. Petitioner/s

Versus

Shahin Praveen Wife of Jaffir Alam @ Md. Jafir Alam, Resident of Mohalla-
Kamapur, Ansar Nagar, P.S.- Bundelkhand O.P. (Nawada), District- Nawada.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Nayan, Advocate

For the Respondent/s : Mr. Syed Masleh Uddin Ashraf, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 09-07-2024

Heard learned counsel for the petitioner as well as respondent and I intend to dispose of the present petition at the stage of admission itself.

02. The present petition has been filed under Article 227 of the Constitution of India challenging the order dated 20.12.2022 passed in consequence of order dated 24.09.2022 & 13.01.2020 by the learned Principal Judge, Family Court, Nawada in Matrimonial Case No. 52 of 2017.

03. Shorn of unnecessary details, the facts of the case are that the petitioner is the husband of the respondent and he has filed divorce case *vide* Matrimonial Case No. 52 of 2017 in the Court of learned Principal Judge, Family Court, Nawada. The respondent appeared and filed a written statement and demanded maintenance of Rs.25,000/- per month. Thereafter, the respondent filed a petition dated 30.05.2018 for grant of interim maintenance

to the tune of Rs.30,000/- per month and Rs.10,000/- towards legal expenses. The petitioner filed his reply on 07.06.2018 along with the web copy of the order dated 19.01.2017 passed in Cr. Misc. No. 27783 of 2016 wherein the petitioner has been directed to pay Rs.5,500/- per month to the respondent as per his undertaking at the time of grant of anticipatory bail. While ordering for the payment of Rs.5,500/- per month, learned Single Judge further ordered that the aforesaid payment would be subject to any order being passed in matrimonial or maintenance proceeding. However, *vide* order dated 13.01.2020 passed in Matrimonial Case No. 52 of 2017, the petitioner was directed to pay Rs.3,000/- per month towards maintenance amount and Rs.1,000/- towards litigation cost on each date of matrimonial proceeding with effect from June 2018. The respondent filed another petition on 07.06.2022 claiming the arrears of maintenance amount and the learned counsel for the petitioner submitted a reply on the same date stating therein that petitioner has already been paying Rs.5,500/- per month but the learned trial court rejected the prayer of the petitioner and without taking into consideration the earlier payment being made in terms of order dated 19.01.2017 passed in Cr. Misc. No. 27783 of 2016, passed the order dated 24.09.2022, directing the petitioner to pay the arrears and maintenance amount in terms of order dated 13.01.2020. The petitioner again filed a

petition dated 09.11.2022 along with order dated 19.01.2017 passed in Cr. Misc. No. 27783 of 2016, stating therein that petitioner has been paying more than the maintenance amount to the respondent passed by the learned trial court in its order dated 13.01.2020 and made a prayer for adjustment of the payments already made towards maintenance amount. However, the said petition dated 09.11.2022 was also rejected by the learned family court holding that no modification was required in the order dated 13.01.2020. All these three orders have been challenged in the present case.

04. Learned counsel for the petitioners submits that while passing the order dated 13.01.2020, the learned Family Court did not consider that a rejoinder on behalf of the petitioner was filed earlier and was already on record wherein the petitioner has mentioned the fact about payment being made in terms of the order dated 19.01.2017 of the learned Single Judge in Cr. Misc. No. 27783 of 2016. The learned counsel further submitted that the petitioner has been making payment of Rs.5,500/- per month to the respondent but this payment was subject to any order passed in matrimonial or maintenance proceeding. The learned family court overlooked these facts and passed the orders even when the very fact was brought to the notice of the family court but it did not pay any attention to it. The petitioner is more aggrieved by the order

which has been made effective from June, 2018 and the petitioner was directed to make payment of the arrears of the interim maintenance amount. If the contention of the petitioner would have been taken into consideration, the learned Family Court might have come to a finding that there was no requirement of passing any orders for payment of arrears amount since the petitioner has already been making payment of Rs.5,500/- per month and then towards compliance of orders of the Family Court, petitioner would have made payment of lesser amount. The petitioner repeatedly made requests to the learned Family Court for modification of the order in the light of directions passed in Cr. Misc. No. 27783 of 2016 but the learned trial court has completely failed to take notice of this fact and without considering the purpose and intent of the observation made in Cr. Misc. No. 27783 of 2016, and without any discussion rejected the petition for modification by only saying that no modification was required in order dated 13.01.2020. Thus, the impugned orders could not be sustained.

05. Learned counsel appearing on behalf of the respondent vehemently argued that the order of the learned family court does not suffer from any infirmity and the same is a just and reasonable order. The order of the learned family court was passed in ignorance of the directions of this Court in the order dated

19.01.2017 passed in Cr. Misc. No. 27783 of 2016 and for this reason no fault could be found in the impugned order. The petitioner was required to make payment since June, 2018 for an amount of Rs.3,000/- and Rs.1,000/- towards interim maintenance and litigation expenses, respectively which he has not paid since June, 2018 till June, 2022. Learned counsel further submits that no doubt the order passed in Cr. Misc. No. 27783 of 2016 has been made subject to any order passed in matrimonial or maintenance proceeding but when the order was passed by the learned Principal Judge there was no occasion for him to consider this fact and considering the relationship of the parties and the need of the respondent, it was only after due consideration that the learned Principal Judge refused to accede to the prayers of the petitioners about modification in the order. The respondent has been living a life of destitute and she has no source of income and she suffers from various ailments. She has not been able to get proper medical treatment due to lack of money. All these facts were before the learned Principal Judge and he has taken a right decision in not allowing the adjustment of the amount paid during the period of June, 2018 till June, 2022 and hence the impugned order may be affirmed.

06. Having regard to the facts and circumstances and rival submissions of the parties, I am of the view that the initial

order of interim maintenance of the learned Principal Judge, Family Court, Nawada suffers from impropriety since it has been passed without consideration of the orders of the learned Single Judge of this Court in Cr. Misc. No. 27783 of 2016. It was for some reason that while passing the orders dated 19.01.2017 in Cr. Misc. No. 27783 of 2016, the learned Single Judge made the payment to the respondent, on the undertaking of the petitioner, subject to any order being passed in matrimonial or maintenance proceeding. The orders of the learned Single Judge was by way of interim measure and its life would be till the pendency of the case in which anticipatory bail was granted. Final call was required to be taken by the Family Court, if need arose. But the learned Family Court missed this point. If the learned Principal Judge would have taken this fact into consideration and passed the orders, no issue would have arisen. The respondent was duty bound to bring this fact to the notice of the learned Principal Judge when she made the prayer for grant of interim maintenance. It is also surprising that the learned Principal Judge did not take into consideration this fact while passing the initial order dated 13.01.2020, though the petitioner made this fact clear in his rejoinder. Thereafter, from the order dated 20.12.2022, I find that no reasons have been assigned as to why no modification was being allowed by the learned Principal Judge. The respondent by

not mentioning the fact of getting an amount of Rs.5,500/- per month is guilty of active concealment. If she had been getting more than the amount which has been ordered by the learned Principal Judge with effect from June 2018, in my considered opinion, the said amount of interim maintenance is liable to be adjusted against the payment made during this period by the petitioner and could not be treated as arrear. However, any payment made, over and above what has been ordered by the learned Principal Judge, would not be required to be refunded. Hence, the petitioner would not be liable to make payment of arrear amount from June 2018 and June 2022 and to that extent the impugned orders need modification..

07. In the light of aforesaid direction, orders dated 13.01.2020, 24.09.2022 and 20.12.2022 passed by the learned Principal Judge, Family Court, Nawada in Matrimonial Case No. 52 of 2017 stand modified and accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.07.2024
Transmission Date	N/A