

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.235 of 2019

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

MD. SADDAM HUSSAIN Son of Basiruddin Resident of Village- Kauakole,
Police Station- Kauakole, District- Nawadah.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR AND Ors.
2. Shamima Khatoon Wife of Md. Saddam Hussain and Daughter of Jassim Shah Resident of Village- Asthawan, Police Station- Karande, District - Sheikhpura.
3. Mossabir Opposite Party No. 3 and 4 are minors and residing under the guardianship of Mother Opposite Party No. 2
4. Mojammil Opposite Party No. 3 and 4 are minors and residing under the guardianship of Mother Opposite Party No. 2

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Arun Kumar
For the Respondent/s : Mr.Ajit Kumar

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 30-01-2024 The instant Revision is directed against an order passed by the learned Principal Judge, Family Court, Sheikhpura in Maintenance Case No. 23M of 2017 on 14th December, 2018.

2. It is submitted by the learned Advocate for the petitioner assailing the impugned judgment that the petitioner is a day labourer in a company as a Mansion (Mistri) and earns Rs. 250/- per day. It is not possible for him to pay maintenance to his wife at the rate of Rs. 3,000/- per month and Rs. 2,000/- each for the two children of the parties.



3. It is not in dispute that the opposite party no.2 is the married wife of the petitioner. It is also not disputed that in the wedlock between the parties, the petitioner gave birth to two children. On the date of delivery of the impugned order, they were aged about one and half years and seven months. Admittedly, the opposite party no.2 has been residing separately with her two children. No evidence is forthcoming to the effect that the opposite party no.2 has independent source of income.

4. Therefore, the petitioner is under legal and moral obligation to maintain the opposite party no.2 and the said two minor children of the parties.

5. Relying on the principle laid down by the Hon'ble Supreme Court in the case of *Anju Garg vs. Deepak Kumar Garg* reported in *AIR Online 2022 SC 306*, this court holds that even if the opposite party is a day labourer and he does not have fixed income, his income may be presumed on the basis of minimum wages payable to an unskilled labourer.

6. In such view of the matter, this court holds that the income of the petitioner would be Rs. 12,000/- per month and one third of the amount is Rs. 4,000/-. Under such circumstance, the quantum of maintenance should be Rs. 2,000/- for the opposite party no.2 and Rs. 1,000/- each for the



two children of the parties. Thus, the petitioner is directed to pay in all Rs. 4,000/- per month from the date of filing of the application under Section 125 of the Cr.P.C. to the opposite party no.2 within 10th of each succeeding month. The quantum of maintenance is accordingly modified. The instant Revision is thus disposed of.

7. Since the petitioner did not pay any amount of maintenance, a distress warrant was issued. By filing, I.A. No. 4 of 2019, the petitioner has prayed for stay of the operation of the said impugned order.

8. The said order was passed under Section 128 of the Cr.P.C. Since the petitioner did not pay even a farthing to the opposite party towards maintenance DW was identified.

9. I do not find any reason to stay the DW which has been issued by the trial court.

(Bibek Chaudhuri, J)

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