

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.221 of 2022

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

RAJENDRA UPADHYAY S/o Awadhesh Upadhyay Resident of Village -
Kothiya Post Narawan, P.S. AwtarNagar, Distt. - Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sangya Devi W/o Rajendra Upadhyay , D/o Nikhil Upadhyay Resident of
Village - Kothiya Post Narawan, P.S. AwtarNagar, Distt. - Saran at Chapra,
At present Address - Nayagaon, P.S.- Nayagaon, Distt. - Saran at Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Vijay Kumar, Advocate

For the Respondent/s : Mr. Nirmal Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

4 10-04-2024 In a proceeding under Section 125 of the CrPC
which was registered as Maintenance Case No. 142/2018, the
learned Principal Judge, Family Court, Saran passed an order of
an interim maintenance directing the opposite party/petitioner
herein to pay interim maintenance at the rate of Rs. 10,000/- per
month to the opposite party/wife herein till the disposal of
Maintenance Case No. 142 of 2018.

2. Having heard the learned Advocate for the
petitioner and on perusal of the impugned order it reveals to this
Court that it weighed in the mind of the trial court that the
opposite party/petitioner herein is a crane operator, he is a semi-



skilled labourer and he earns adequate money to pay an interim maintenance at the rate of Rs. 10,000/- per month. The trial court did not consider the notional income of a semi-skilled labourer under the Minimum Wages Act. The trial court also did not consider as to whether a sum of Rs. 10,000/- comes to one-third of the income of the petitioner herein without assessment of the aforesaid issue.

3. The instant order suffers from lack of exercise of jurisdiction vested in the trial court and impugned order suffers from material irregularity. Accordingly, the order dated 08th December 2021 is quashed and set aside.

4. The learned Principal Judge, Family Court, Saran is directed to assess the notional income of a crane operator taking into account the daily wage of a semi-skilled labourer under the Minimum Wages Act and after computing the notional monthly income, one-third of the amount shall be directed to be paid to the opposite party as an interim maintenance.

5. The instant revision is thus, allowed with the above order. The learned Principal Judge, Family Court, Saran is directed to dispose of the application for interim maintenance within one month from the date of communication of this order afresh. The petitioner is at liberty to act on the server copy of



the order.

(Bibek Chaudhuri, J)

Suraj Dubey /-

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