

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1108 of 2019

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

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JITENDRA MISHRA @ JITENDRA KUMAR MISHRA S/o Surendra
Mishra R/o village- Hasanpur, P.S.- Nayagaon, District- Saran

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Saran Bihar
3. The Circle Officer, Sonapur, Saran Bihar
4. Sabita Devi W/o Jitendra Mishra, D/o Kalyaji Pandey Resident of Hasanpur,
P.S.- Nayagaon, District- Saran (at present resident of Parbejabad,
Golabazar, P.S.- Sonapur, District- Saran)

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrityunjay Kumar Tiwary, Advocate
For the Respondent/s : Mr. Anil Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

7 16-02-2024 The instant Revision is directed against an ex parte order of maintenance passed in Maintenance Case No.32 of 2012 by the learned Principal Judge, Family Court, Saran at Chapra on 15th November, 2017 directing the petitioner to pay maintenance to the opposite party no.2 at the rate of Rs. 5,000/- per month.

2. It is not in dispute that the opposite party is the legally married wife of the petitioner. Learned Advocate for the petitioner has also not disputed that the opposite party no.2 has been residing at her paternal home. Only point for consideration here, is as to whether, the opposite party no.2 is entitled to get



any maintenance or not.

3. It is submitted by the learned Advocate for the petitioner that the petitioner being the opposite party in the maintenance case duly appeared before the trial court and filed his show-cause. But the trial court has failed to consider the show-cause of the petitioner and without ascertaining the monthly income of the petitioner, directed him to pay maintenance at the rate of Rs. 5,000/- per month. It is also submitted by the learned Advocate for the petitioner that the trial court relied on the solitary statement of the petitioner in her petition under Section 125 of the Cr.P.C. to the effect that the opposite party – petitioner herein earns Rs. 20,000/- per month. Considering such statement made by the opposite party in her petition under Section 125 of the Cr.P.C. and on the basis of oral evidence adduced by her, the trial court fixed the maintenance allowance at the rate of Rs. 5,000/- per month.

4. At this stage, this question is left for consideration of this court as to whether the ex parte order passed in Maintenance Case No. 32 of 2012 was passed without giving any opportunity to the opposite party or in spite of ample opportunity, the opposite party – petitioner herein failed and neglected to appear before the trial court and comply with the



direction made by the trial court. In this regard, I like to record the following observation made by the trial court :-

(I) After filing the case, the opposite party appeared in this case and the case was fixed for filing the show-cause reply. But the opposite party did not file the show-cause reply in this case. Thereafter, the case was fixed for ex parte hearing. Thereafter, the opposite party appeared before the court and he filed a petition to recall ex parte order. After hearing of (sic) the both parties the ex parte order has been recalled by the predecessor court and to give the opportunity to the opposite party to file the show-cause reply. Thereafter, several dates have been given to the opposite party to file the show-cause reply, despite that the opposite party did not file show-cause reply in this case. Ultimately, the case was again fixed for ex parte hearing on 27th April, 2015.

5. The application for maintenance was filed in the year 2012. The statutory dictum is that an application under Section 125 of the Cr.P.C. should have to be disposed of within six months from the date of filing of the application. However, it is clear from the impugned order that the opposite party had played a game with the trial court, after his appearance. After appearance, he did not file show-cause within the stipulated date



fixed by the trial court. So, the case was fixed for ex parte hearing. On the prayer made by the petitioner, the ex parte order was vacated and he was directed to file show-cause. But again, he did not file show-cause. Then, the case was again fixed for ex parte hearing. After fixing the date of hearing, he filed a show-cause on 27th April, 2016 i.e. after a lapse of four years from the date of filing of the application which was rightly not considered by the trial court. Now, by filing the instant Revision, the opposite party – petitioner herein has made a prayer to hold that the trial court had acted illegally and with material irregularity in not accepting the show-cause filed by the petitioner. If an indolent and obstinate party flouts the order of the court one after another, he is not subsequently claim equitably relief from the higher court. He who seeks equity, the petitioner has not come with clean hand.

6. While admitting the instant Revision, a coordinate Bench of this court directed the petitioner herein on 28th September, 2022 to go on paying maintenance allowance at the rate of Rs. 3,000/- per month. The petitioner has filed a bank statement showing payment of Rs. 40,000/- on 20th December, 2023 by way of bank transfer. The said amount of Rs. 40,000/- does not cover the entire period of maintenance which was



directed to be passed vide order dated 20th September, 2022.

7. I am not unmindful to note that the opposite party during trial, failed to produce any document in respect of the income of the petitioner. However, the conversation between the petitioner and the opposite party while leading conjugal life has been considered to be privileged communication as per the Evidence Act. It is presumed that a wife must know the income of her husband. It is for the husband to rebut the oral evidence of the wife regarding his income. The petitioner failed to take timely step to recall the ex parte order. The trial court has under compelling circumstances passed the impugned order on 15th November, 2017.

8. With regard to quantum of maintenance, this court likes to state that where the income is not proved by way of satisfactory document, following guideline of the Hon'ble Supreme Court in the case of *Anju Garg vs. Deepak Kumar Garg* reported in *2022 AIR Online SC 306*, income of the husband shall be considered on the basis of Minimum Wages Act. The said principle was followed by the Allahabad High Court in *Kamal vs. State of U.P.* (Cr. Revision No. 461/2023) decided on 25th January, 2024.

9. Therefore, relying on the said principle, this



court can safely hold that the income of the petitioner is presumed to be Rs. 12,000/- per annum as per the Minimum Wages Act, and in that case, the petitioner is under obligation to pay Rs. 4,000/- per month to the opposite party towards maintenance from the date of the filing of the application per month.

10. In view of the above discussion, the order dated 15th November, 2017 is modified and the petitioner is directed to pay/deposit Rs. 4,000/- per month as maintenance allowance to the opposite party no.4 from the date of filing of the application under Section 125 of the Cr.P.C. The arrear maintenance shall have to be paid within ten monthly installments along with the current maintenance within 10th of each succeeding month.

11. The instant Revision is accordingly, disposed of on contest. Their shall be no order as to cost.

(Bibek Chaudhuri, J)

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