

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.77 of 2019

Arising Out of PS. Case No.- Year-1111 Thana- District-

Manoranjana Kumar Son of Late Vishwanath Prasad, Resident of Mohalla -
Prakash Nagar, Naya Tola, Police station- Shikarpur, Distt.- West Champaran.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Swati Shahi, Wife of Manoranjana Kumar, Daughter of late mohan Shahi,
resident of Mohalla- Nand Vihar Colony, Data Baba lane, Police Station -
Mithanpura, Distt.- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Abhijeet Gautam, Adv.
For the Respondent/s : Mr. Lalan Kumar, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 10-01-2024 Heard learned Advocate for the petitioner as well as
learned APP for the State.

2. An order dated 7th July, 2018, passed by the learned
Principal Judge, Family Court, Muzaffarpur, in Misc. Case No.
38 of 2014, for execution or an order of maintenance allowance is
challenged in the instant Revision.

3. It is on record that the opposite party no. 2/wife filed
Maintenance Case No. 110 of 2013 against the present
petitioner/husband. The said application was disposed of on 18th
July, 2014, directing the present petitioner/husband to pay
maintenance @ Rs.10,000/- (Ten thousand) per month. The
petitioner/husband challenged the said order before this Court in



Revision, which was registered as Criminal Revision No. 39 of 2015, the said Revision was disposed of by an order dated 9th November, 2015, whereby and whereunder a Coordinate Bench of this Court modified the amount of maintenance allowance from Rs.10,000/- (Ten Thousand) to Rs. 8,000/- (Eight Thousand) per month. The opposite party no.2/wife filed Execution Case for recovery of arrears maintenance, which was registered as Misc. Case No. 38 of 2014. In the said Misc. Case, the petitioner/husband filed an application under Section 127 of the Cr.P.C. stating inter alia that the opposite party no. 2 herein filed Execution Case for recovery of arrears maintenance amount. The petitioner/husband has already paid Rs. 2,92,000/- to his wife. It is also stated by the petitioner herein that the opposite party no. 2 got a job of Teacher in a Government Middle School w.e.f. 08.08.2014. Therefore, from August, 2014, the opposite party no. 2 herself was able to maintain herself from her salary.

4. Under such circumstances, the present petitioner prayed for modification of the order under Section 125 of the Cr.P.C. in accordance with the provision contained under Section 127 of the Cr.P.C.

5. On perusal of the impugned order dated 7th July, 2018, passed by the learned Principal Judge, Family Court, Muzaffarpur, it appears that the learned Judge refused to grant



any relief under Section 127 of the Cr.P.C. on the ground that an order under Section 125 of the Cr.P.C., passed in Maintenance Case No. 110 of 2013, was challenged before this Hon'ble Court in Revision No. 39 of 2015 and in the said Criminal Revision the petitioner herein never pleaded that his wife got a job of School Teacher in a Government run School. It is also noted by the learned trial Judge that when the High Court on due consideration of entire facts and circumstances passed the order in Criminal Revision No. 39 of 2015 on 9th November, 2015, directing the petitioner to pay maintenance @ Rs.8,000/- (Eight Thousand) per month, the said order cannot modify under Section 127 of the Cr.P.C.

6. On bare perusal of the impugned order, this Court is of the view that the learned trial Judge failed to appreciate that there cannot be any waiver in law of pleadings. The law of pleadings never says that if in one proceeding, a particular party fails to state a factual aspect, he is debarred in a future proceeding under Section 127 of the Cr.P.C. to agitate this point.

7. It is specifically pleaded by the petitioner in his petition under Section 127 of the Cr.P.C. that the opposite party no. 2 got a job on 8th August, 2014. She is now working as a Teacher. She earns a monthly salary, with the help of which she can maintain herself. She is not unable to maintain herself.



Therefore, she is not entitle to get any maintenance from the month of her appointment as a Teacher in a Government School. This fact requires to be decided on the basis of the evidence to be adduced by the parties.

8. The learned Magistrate without giving any opportunity to the petitioner to prove his case, unilaterally rejected the application under Section 127 of the Cr.P.C. The impugned order is per se illegal, inoperative and suffers from material irregularity.

9. Accordingly, the impugned order dated 7th July, 2018 is quashed and set aside.

10. The instant Revision is allowed.

11. The learned Principal Judge, Family Court, Muzaffarpur is directed to re-hear the application under Section 127 of the Cr.P.C. giving opportunity to the parties to adduce the evidence, if any, and pass appropriate order in accordance with law within a period of six months from the date of communication of the instant order passed by this Court.

(Bibek Chaudhuri, J)

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