

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No 666 of 2023

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

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1. Kranti Kumar Mishra Son Of Late Mukti Nath Mishra Resident Of Village - Quarter No. 166 (SLUM), Po- Lohianagar, Ps- Kankarbagh, Patna
 2. Motijhari Devi @ Moti Zari Mishra Wife Of Shri Kranti Kumar Mishra Resident Of Village - Quarter No. 166 (slum), Ps- Kankarbagh, Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Kumari Arunima Wife Of Late Arun Kumar Mishra Resident Of Village - Puraniganj (jamalpur Road), Ps- Kasim Bazar, Po And Distt- Munger, Presently Residing At Road No. 8, Ashok Nagar, Ram Lakhan Path, Opp. Doorbash Lane, Po- Lohianagar, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Nikhil Kumar Agrawal
For the Respondent/s : Mr.Madhura Nand Jha

CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

ORAL JUDGMENT

Date : 06-09-2024

This revision petition has been preferred by the petitioners being aggrieved with the order dated 24.8.2023 passed in Criminal Appeal No 28 of 2022 by the learned Sessions Judge, Munger whereby and whereunder, while allowing the appeal preferred by the petitioners, the learned Sessions Judge remitted back the matter to the learned trial Court and further directed the petitioners to pay a monthly maintenance of Rs 10,000/- to opposite party No 2.



2 Facts of the case are that the petitioners are father-in-law and mother-in-law of opposite party No 2. An application under Section 12 of the Protection of Women from Domestic Violence Act, 2003 (for brevity, the *Act*) has been filed by opposite party No 2 before the learned CJM, Munger being Domestic Violence Case No 650 of 2020. During pendency of the said case, a petition under Section 23 of the Act has been filed by opposite party No 2 which has been allowed by the learned Judicial Magistrate, 01st Class vide her order dated 05.08.2022 and direction was given to the petitioners herein to pay an interim maintenance of Rs 10,000/- per month to opposite party No 2. The same was assailed by the petitioners before the appellate Court. The learned appellate Court, vide impugned order dated 24.08.2023, allowed the appeal and remitted back the matter to the learned Family Court and also directed the petitioners to pay a monthly maintenance amount of Rs 10,000/- to opposite party No 2.

3 Learned counsel for the petitioners submits that once the appellate Court allowed the appeal and remitted the matter back to the concerned learned Magistrate, then there was no scope available to the appellate Court to direct the petitioners to pay a monthly maintenance of Rs 10,000/- to opposite party No 2.



Therefore, the impugned order passed by the learned appellate Court, on this ground alone, is liable to be set aside.

4 I have heard learned counsel for both the parties and perused the impugned order 24.08.2023 passed by the learned Sessions Judge as well as the order passed by the learned Magistrate dated 05.08.2022.

5 In the case of ***Rajnish -Versus- Neha, reported in AIR 2021, Supreme Court 569***, the Hon'ble Apex Court made direction to all the Courts below for getting affidavits of both the parties regarding their assets and liabilities while granting any order of interim maintenance or a final order of maintenance. Undisputedly, in this case before the learned Magistrate, no affidavits have been submitted by the parties and without submission of affidavits, the learned Magistrate passed the order of interim maintenance which has been rightly set aside by the learned appellate Court. However, perusal of the impugned order passed by the appellate Court further shows that the learned appellate Court, while allowing the appeal, remitted back the matter to the concerned learned Magistrate directing the parties to file their affidavits in view of the judgment passed by the Supreme Court in the case of ***Rajnish -Versus- Neha (supra)*** but simultaneously, the learned appellate Court also directed the



petitioners to pay a monthly maintenance of Rs 10,000/- to opposite party No 2. Once the appellant Court allowed the appeal, set aside the order of the learned Magistrate and remitted back the matter to the learned Court below then the appellate Court has no right to direct the petitioners to pay monthly maintenance of Rs 10,000/- to opposite party No 2.

6 Thus, the above part of the impugned order is liable to be set aside. Accordingly, this revision petition is partly allowed. The part of the impugned order whereby the learned Family Court directed the petitioners to pay monthly maintenance of Rs 10,000/- to opposite party No 2 is set aside and the matter is remitted back to the concerned learned Magistrate to decide the said domestic violence case as early as possible preferably within a year from today.

7 Both the parties are further directed to file their affidavits positively within a month from today, as directed by the appellate Court vide its impugned order dated 24.08.2023, if already not filed.

(Arvind Singh Chandel , J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.09.2024
Transmission Date	18.09.2024

