

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1241 of 2019

In
Miscellaneous Appeal No.739 of 2018

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

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Mukesh Kumar, Son of Krishna Sah, Resident of Village - Chimnapur, Ward
No.- 2, P.S.- Lalganj, District - Vaishali.

... .. Petitioner/S

Versus

1. Sarita Devi, Wife of Mukesh Kumar, At Present D/O Nathuni Sah, Resident Of C/O Nathuni Sah, Resident Of Village - Ramnagara, P.S.- Mejarganj, District - Sitamarhi.
2. Tanya Kumari, Daughter Of Mukesh Kumar, Under Guardianship Of Their Mother Sarita Devi Resident Of C/O Nathuni Sah, Resident Of Village - Ramnagara, P.S.- Mejarganj, District - Sitamarhi.
3. Arush Kumar, Son Of Mukesh Kumar, Under Guardianship Of Their Mother Sarita Devi Resident Of C/O Nathuni Sah, Resident Of Village - Ramnagara, P.S.- Mejarganj, District - Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Pranav Kumar, Advocate Mr.Rajeev Ranjan No.II
For the Respondent/s	:	Mr.Nilesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 20-04-2024 1. The instant revision is directed against an order, dated 6th of April, 2018, passed by the learned Principal Judge, Family Court, Sitamarhi in Misc. Case No. 96 of 2014, whereby and whereunder the learned Judge allowed the application filed by the opposite party under Section 125 of the Cr.P.C. directing the petitioner to pay maintenance allowance at the rate of Rs. 6,000/- per month for the Opposite Party No. 1 and Rs. 3,000/- each per month for the two children of the parties, total being



Rs. 12,000/- per month from the date of filing of the application.

2. It is submitted by the learned Advocate for the petitioner that the petitioner was posted as an Engineer in Indian Navy and he used to earn Rs. 40,000/- per month at the time of his marriage. Marriage of the petitioner was solemnized with the Opposite Party No. 1 on 20th of June, 2007. After marriage, salary of the petitioner was gradually increased and on the date of disposal of the application under Section 125 of the Cr.P.C., it was recorded by the learned Trial Judge that he used to earn Rs. 70,000/- per month.

3. In paragraph 13 of the impugned judgement, the learned Trial Judge considered the pay-slip of the petitioner for the month of August, 2015 and found that his net income was Rs. 36,611/-. Thus, the petitioner was directed to pay maintenance at the rate of Rs. 12,000/- per month for the opposite party and two children of the parties from the date of filing of the application vide order, dated 6th of July, 2018.

4. It is submitted by the learned Advocate for the petitioner that the petitioner has retired from his service and he gets his pension at the rate of Rs. 20,000/- per month + dearness allowance.

5. It is not in dispute that the petitioner was an



employee of Indian Navy and he earns at least Rs. 30,000/- being half of his basic salary and dearness allowance per month.

5. Learned Advocate for the petitioner has filed a copy of the letter written by the learned Principal Judge, Family Court, Sitamarhi to the Principal Controller of Defence Accounts (Pensions) Draupadi Ghat, Allahabad (U.P) in the year 2022, requesting him to deduct the amount of arrears maintenance as well as current maintenance from his salary/pension and deposit the same to the account of his wife.

6. It is contended by the learned Advocate for the petitioner that learned Principal Judge, Family Court, Sitamarhi had no authority to write such letters to the Principal Controller of Defence Accounts (Pensions) for realization of arrears as well as current maintenance allowance from the account of the petitioner. If the petitioner fails to pay maintenance to the Opposite Party, she has the remedy under the statute to execute the order of maintenance. The order of maintenance is to be executed in the same manner as levy of fines as per the provisions of Section 128 of the Cr.P.C.

7. It is submitted by the learned Advocate for the petitioner that after his retirement from service, entire retiral benefit is being deposited in the account of the opposite party



and the petitioner is not getting anything. It is submitted by him that in view of reduction of earning due to retirement, the maintenance amount is required to be modified.

8. Learned Advocate for the opposite party, on the other hand, has supported the judgement passed by the learned Principal Judge, Family Court, Sitamarhi.

9. Having heard the learned Advocates for the petitioner and the opposite party and on careful perusal of the entire materials on record, this Court finds that the opposite party did not challenge the contention raised on behalf of the petitioner that the petitioner has retired from service.

10. Considering the last income of the petitioner, this Court finds that the pension shall not be less than Rs. 30,000/-. The opposite party and her children are entitled to get 1/3 of the pension amount from the petitioner. Therefore, the maintenance amount payable to the opposite party and her two children is modified and fixed at Rs. 10,000/- per month from the date of the retirement of the petitioner.

11. The instant revision stands allowed accordingly.

12. The impugned order passed by the learned Principal Judge, Family Court, Sitamarhi in Misc. Case No. 96 of 2014, dated 6th of June, 2018, is quashed and set aside.



13. The petitioner is directed to comply with the order
passed by this Court from the date of his retirement.

(Bibek Chaudhuri, J)

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