

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1475 of 2019

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

RAJIV KUMAR LAL @ RAJIV KUMAR Son of Ram Sharan Lal Resident
of Village - Balha Maksudan, P.S.- Pupri, Distt - Sitamarhi.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Menka Karn Wife of Rajiv Kumar Lal @ Rajiv Kumar, D/o Rabindra Lal
Resident of Village - Balha Maksudan, P.S.- Pupri, Distt - Sitamarhi. At
present resident of Village - Jhajhihat, P.S.- Pupri, Distt - Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ranjan Kumar Sinha
For the Respondent/s	:	Mr.Rajendra Nath Jha

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

- 3 24-01-2024 Order dated 3rd October, 2019 passed in
- Maintenance Case No. 99 (M) of 2015 under Section 125 of the
Cr.P.C. by the learned Principal Judge, Family Court, Sitamarhi
is under challenge in the instant Revision on the ground that the
learned trial Judge passed the order of maintenance in favour of
the opposite party no.2 on hypothetical imaginary
consideration. In support of his contention, the learned Advocate
for the petitioner refers to me paragraph 14 of the impugned
judgment wherein the learned trial Judge recorded that the
opposite party no.2 in course of her evidence produced certain
copies of record of rights in respect of certain properties which
were marked as Exhibit 3 series to show that the petitioner has



landed properties. However, on perusal of the said Exhibits, the learned trial Judge himself found that the said record of rights does not belong in the name of the petitioner. But in paragraph 15, the learned Judge held that the petitioner has immovable properties and he is an educated able bodied person and he can earn Rs. 1,000/- per day. Thus, the learned Judge held that the notional income of the petitioner would be Rs. 25,000/- per month.

2. It is submitted by the learned Advocate for the petitioner that there is no basis of such finding made by the court below. It is also submitted by the learned Advocate for the petitioner that the petitioner used to work in Ahmedabad as a labour. Due to the criminal case filed by the opposite party no.2, he was arrested and was incarceration for about four months. Due to such long absence, he has been terminated from his job which he was lived in Ahmedabad in the State of Gujrat.

3. Without considering such fact, which was brought in by the present petitioner on record before the trial court, the learned Judge directed the opposite party to keep a sum of Rs. 2,50,000/- in fix deposit in the name of the opposite party no.2 and the rest amount of Rs. 7,500/- would be handed over to the petitioner. It is also directed that the petitioner is



under obligation to pay Rs. 5,000/- to the opposite party no.2 for her maintenance and Rs. 3,000/- in favour of the minor daughter of the parties, total being Rs. 8,000/-. Moreover, it is directed that till the marriage of the minor daughter of the parties, the petitioner shall pay Rs. 6,000/- per month to incur cost of marriage of the said minor daughter. Moreover, the petitioner was directed to pay Rs. 50,000/- towards litigation cost.

4. It appears to this court that the finding of the trial Judge with regard to monthly income of the petitioner has been made on fanciful consideration without any material on record. Even if, a person earns Rs. 25,000/- per month, he cannot be directed to pay Rs. 40,000/- per month towards maintenance to his wife and minor child, being more than 50 per cent of his income while the law of land is that the husband can be directed to pay maintenance to the extent of one third of his income to his wife.

5. Considering such aspect of the matter, this court is of the opinion that the impugned order dated 3rd October, 2019 in Maintenance Case No. 99 of 2015 has been passed without considering the materials on record and the evidence adduced by the parties. The impugned order is therefore, quashed and set aside. Consequently, the revisional application



is allowed.

6. The learned trial Judge is directed to pass a reasoned order on the basis of evidence on record within one month from the of communication of this order.

7. The petitioner is at liberty to act on the server copy of the order.

(Bibek Chaudhuri, J)

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