

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.524 of 2024

In
Miscellaneous Appeal No.594 of 2023

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

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Ashok Kumar Son of Late Bunnu Ram Resident of Mohalla - Gora Bazar,
Danapur Cantt., P.S.- Danapur, District - Patna (Bihar).

... .. Petitioner/s

Versus

Seema Devi @ Sema Jyoti Daughter of Late Sobrati Ram Wife of Ashok
Kumar, Resident of Mohalla - Gora Bazar, Danapur Cantt., P.S.- Danapur,
District - Patna (Bihar), present residing at Naihar House at Mohalla - L.I.G.
21, Kankarbagh, P.S.- Kankarbagh, District - Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Advocate
		Mr. Ravi Ranjan Kumar, Advocate
For the Respondent/s	:	Smt. Sudha Ambastha, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

4 23-04-2025 This is an application under Section 19(4) of the

Family Courts Act challenging legality, propriety and validity of

an order dated 27.06.2023 in Maintenance Case No.25(M) of

2011, whereby and whereunder the petitioner was directed to

pay maintenance to the opposite party and the son of the parties

at the rate of Rs.12,000/- per month and Rs.4500/- per month,

total being Rs.16,500/- per month and one time litigation cost of

Rs.25,000/-.

2. Marriage between the parties is not disputed. It is

also not disputed that the opposite parties have been residing

separately from the petitioner.



3. It is contended on behalf of the opposite parties that the petitioner inspite of having sufficient means refused and neglected to maintaining his wife and son.

4. The learned Additional Principal Judge, Family Court, Patna on the basis of pleadings of the parties and evidence on record found that the petitioner inspite of having sufficient means has been refusing to maintain his wife and son. Therefore, he passed the impugned order granting maintenance in favour of the opposite parties.

5. The said order of maintenance is under challenge at the instance of the petitioner on the following grounds:-

“that the petitioner has retired from service in January, 2023, presently he is getting net pension of Rs.26,746/-, when he was employed the petitioner suffered a major road traffic accident and he is disabled by 20%. For his medical treatment, he took loan from the government and monthly a sum of Rs.11,000/- is deducted from his pension.”

6. Under such circumstances, it is contended on behalf of the petitioner that the Trial Court without considering the present income of the petitioner granted maintenance allowance at the rate of Rs.16,500/- per month, which is more than 50% of his income.



7. Learned Advocate on behalf of the petitioner further submits that the Trial Court during the pendency of the maintenance case passed an order of interim maintenance and the petitioner has been going on paying interim maintenance at the rate of Rs.5,000/- per month.

8. The learned Advocate on behalf of the opposite parties, on the other hand, submits that the opposite party No.3 being the son of the parties has already attained majority. Therefore, from the date of attainment of majority, he is not entitled to receive any maintenance allowance, but at the time of filing the maintenance case, he was aged about 12/13 years and he is entitled to get maintenance till his attainment of majority.

9. Having heard the learned Counsels for the parties.

10. This Court finds that the dispute relates to quantum of maintenance to be paid by the petitioner in favour of the opposite parties. Admittedly, the petitioner is now getting Rs.26,746/- as pension. Thus, when he was in employment, the Court can take judicial notes of the fact that he used to receive at-least double the amount of the pension which he is now receiving, calculating the said amount, the salary of the petitioner during his employment comes to Rs.53,000/- approximately.



11. It is submitted on behalf of the petitioner that he is deducting Rs.11,000/- per month for payment of loan taken for his medical treatment, so if that amount be added the salary would have been almost Rs.65,000/-.

12. The instant case was instituted in the year 2011. I have already stated that the petitioner retired from service in January, 2023, when this Court has assess the income of the petitioner when he was employed at Rs.65,000/- approximately the amount of Rs.16,500/- since to be below 1/3rd of the salary. Therefore, the petitioner is under obligation to pay maintenance allowance at the rate of Rs.16,500/- from the date of filing of application till December, 2022.

13. This Court is not unmindful to note that the son of the petitioner has attained his majority. The parties did not disclose the date of attainment of majority of the son of the petitioner. Therefore, a sum of Rs.4500/- shall be deducted from the maintenance amount on and from the date of attainment of majority of the son of the parties. If it is found that the petitioner has been paying Rs.5,000/- per month towards interim maintenance that amount shall be adjusted from the final order of maintenance.

14. Now comes the question as to whether, the



opposite party No.1 is entitled to get Rs.12,000/- per month towards maintenance allowance even after the retirement of the petitioner.

15. I have already recorded that the petitioner's take home pension is Rs.26,746/- per month. Alongwith the said amount, a sum of Rs.11,000/- should be added which he is allegedly paying for repayment of loan as the said amount is not statutory deduction. It is already settled that for the purpose of assessment of income of a party to a proceeding under Section 125 of the Cr.P.C. only the statutory deductions would be deducted from the gross salary.

16. Taking into consideration of such facts, I hold that the petitioners pension is $\text{Rs.}26,746 + 11000 = \text{Rs.}37,746/-$. Rs.12,000/- is the 1/3rd of the said amount. Therefore, the petitioner is under obligation to pay Rs.12,000/- per month to the opposite party No.1 towards maintenance. Thus, this Court holds that the opposite parties are entitled to get maintenance allowance at the rate of Rs.16,500/- per month from the date of application till attainment of majority of the son of the parties upto December, 2022. Thereafter, the opposite party No.1 is entitled to get maintenance at the rate of Rs.12,000/- per month. The amount of interim maintenance, if already paid by the



petitioner shall be deducted from the amount of maintenance so fixed in the final order by the learned Additional Principal Judge, Family Court, Patna in Maintenance Case No.25(M) of 2011, with the aforesaid modification.

17. Accordingly, the instant criminal revision is disposed of.

(Bibek Chaudhuri, J)

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