

IN THE HIGH COURT OF JUDICATURE AT PATNA

Sanjay Kumar

vs.

Shalini Kumari

MISCELLANEOUS APPEAL NO. 530 of 2023

26 April, 2024

(Hon'ble Mr. Justice P.B. Bajanthri and Hon'ble Mr. Justice Alok Kumar Pandey)

Headnotes

Appeal - filed against order passed by Family court whereby alimony amount was enhanced from the date of institution of the case in favour of the wife.

Held - In exercising the power under Section 25(2), the court would have regard to the "change in the circumstances of the parties". There must be some change in the circumstances of either party which may have to be taken into account when an application is made under sub-section (2) of Section 25 for variation, modification or rescission of the order as the court may deem fit. **(Para 6)**

Maintenance is always dependent on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors. - Enhancement of alimony is justified. **(Para 18)**

Appeal is dismissed. **(Para 19)**

Appearances for Parties

For the Appellant/s : Mr. Ranjan Kumar Sinha, Adv

For the Respondent/s : Ms. Surya Nilambari, Adv

Headnotes prepared by Reporter : **Mrs. Akanksha Malviya, Advocate**

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.530 of 2023

Sanjay Kumar S/o Late Yogendra Kumar Singh Resident of Chotki Kopa P.S.
Naubatpur District- Patna.

... .. Appellant/s

Versus

Shalini Kumari D/o Anand Shankar At present Resident of Mohalla-
Priyadarshinagar, New Bailey Road, P.S.- Rupaspur, District- Patna
permanent resident of Sultanganj, District Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Ranjan Kumar Sinha, Adv.
For the Respondent/s : Ms.Surya Nilambari, Adv.

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 26-04-2024

The present appeal is directed against the order dated 21.07.2023 passed in Miscellaneous Case No. 06 of 2015 whereby the learned Additional Principal Judge, Family Court, Patna has enhanced the alimony amount from Rs. 5,000/- to Rs. 18,000/- from the date of institution of the case in favour of the respondent-wife.

2. Briefly stated the facts of the miscellaneous case is that appellant and respondent were granted divorce on mutual consent under Section 13B of the Hindu Marriage Act vide order dated 04.08.2004 in Matrimonial Case No. 18 of 1998 and after passing the decree of divorce on mutual consent,



on the basis of evidence, salary and property of the appellant, sum of Rs. 5,000/- was allowed in favour of the respondent and her son on 19.09.2008. It is claimed that appellant is earning salary of Rs. 60,000/- per month and amount of Rs. 5,000/- is meagre amount as per status of the appellant and respondent prayed that said amount of Rs. 5,000/- may be enhanced up to Rs. 35,000/- per month and also Rs. 25,000/- as a litigation cost against the appellant on 21.02.2015.

3. Learned counsel for the appellant submitted that enhanced amount of Rs. 18,000/- per month from the date of institution of the case in favour of the respondent is quite contrary to law as the appellant has several responsibility and liability to bear and his present salary as well as his salary at the relevant time i.e. in the year 2015 is not sufficient to pay the enhanced amount of Rs. 18,000/- per month in favour of the respondent. Hence, the present miscellaneous appeal. Learned counsel for the appellant further submitted that Additional Principal Judge, Family Court has failed to consider this fact that in the year 2015 appellant was earning salary for about Rs. 50,000/- per month, despite that the concerned Family Court enhanced the alimony amount on the basis of hypothetical current salary as on 2015 because the appellant was earning



salary of Rs. 74,305/- in the month of March, 2023 and the concerned Family Court has passed the order enhancing the alimony amount from Rs. 5,000/- to Rs. 18,000/- per month since the date of filing of matrimonial case i.e. from the year 2015. In that context, the order passed by the concerned Family Court is bereft of merit. It has further submitted that after decree of divorce on mutual consent on 04.08.2004, the appellant solemnized second marriage with Sangam Sneha in the year 2006 and out of the said wedlock, there are three children, beside old aged widow mother of the appellant. Learned counsel for the appellant further submitted that respondent is woman of means. The learned Family Court failed to consider that house was purchased and constructed by mother of the appellant and appellant having two sisters and one brother can never claim the said house as per Hindu Laws. He further submitted that appellant was appointed in the service on the basis of compassionate ground and as per provision of said compassionate ground, the appellant was liable to maintain his family as a 'karta' of the family, so the appellant is duty bound to maintain all the liabilities. In this way, the concerned court has taken frivolous and hypothetical consideration while disposing of the miscellaneous case and enhanced the amount of



permanent alimony from Rs. 5,000/- to Rs. 18,000/- without any basis as the concerned court hypothetically assessed the salary of the appellant is about one lakh per month. Learned counsel further submitted that in the light of given facts and circumstances, the impugned order passed by the Additional Principal Judge, Family Court is against the law and same is fit to be set aside.

4. Learned counsel for the respondent submitted that respondent is unable to maintain herself and the order dated 21.07.2023 passed by Additional Principal Judge, Family Court, Patna is justified and legal and the same is based on the material available on record by which the concerned court enhanced the amount of permanent alimony from Rs. 5,000/- to 18,000/- per month on 21.07.2023 with reference to application for enhancement dated 21.02.2015. Learned counsel further submitted that the appellant is a Central Government Employee (T.T.E.) and his salary is not less than rupees one lakh as on the date of application for enhancement of maintenance. Besides this, the appellant is lone son of his parents and he has ancestral property as well as other source of income. Learned counsel submitted that in the light of given facts and circumstances, the impugned order by which permanent alimony has been



enhanced from Rs. 5,000/- to Rs. 18,000/- per month is justified and legal and hence, no interference is needed.

5. On the basis of argument as well as material available on record, the moot question is whether enhanced amount of Rs. 18,000/- as on the date of enhancement application filed on 21.02.2015 is justified and legal under Section 25 (1) and (2) of the Hindu Marriage Act, 1955 ?

6. Section 25 of the Hindu Marriage Act, 1955 confers power upon the court to grant a permanent alimony to either spouse who claims the same by making an application. Sub-section (2) of Section 25 of the Hindu Marriage Act confers ample power on the court to vary, modify or discharge any order for permanent alimony or permanent maintenance that may have been made in any proceeding under the Act under the provisions contained in sub-section (1) of Section 25. In exercising the power under Section 25(2), the court would have regard to the "change in the circumstances of the parties". There must be some change in the circumstances of either party which may have to be taken into account when an application is made under sub-section (2) of Section 25 for variation, modification or rescission of the order as the court may deem fit.

7. In the present case, respondent has filed



miscellaneous case for enhancement of permanent alimony from Rs. 5,000/- to Rs. 35,000/- per month on 21.02.2015 and during course of trial of said miscellaneous case, respondent has adduced two witnesses namely, Kumud Kumar and respondent herself. Besides oral evidence, some documentary evidence have also been produced which are as follows:-

1. *Salary slip of April, 2018 (Ext-1).*
2. *Salary slip of May, 2018 (Ext.1/1).*
3. *Salary detail of appellant for the financial year 2022-2023 (Ext.2).*
4. *Photocopy of sale deed (Ext.3).*
5. *Photostat copy of fee receipt of Akash Anand dated 08.07.2017 (Ext. 4).*
6. *Counselling List (Ext.4/1).*
7. *Photostat copy of bill receipt of Akash Anand (Ext.4/2).*
8. *Bill receipt of Akash Anand dated 19.07.2018 (Ext.4/3).*

On behalf of the appellant, three witnesses have been examined. They are Kamlesh Sharma (OPW-1), Sangam Sneha (OPW-2) and OPW-3(appellant himself). Besides oral evidence, some documentary evidence have also been produced, which are as under:-

1. *Photocopy of salary slip of March, 2023 (Ext.A).*
2. *Photocopy of salary slip of February, 2023 (Ext.A/1).*
3. *Photocopy of school fee receipts (Ext.B, B/1, B/2 and B/3).*
4. *Photocopy of receipt of*



Income Tax Return for the financial year 2022-23 (Ext.C).

8. It is necessary to analyze the evidence adduced by Shalini Kumari, who is respondent in the present appeal. She has stated that appellant-Sanjay Kumar is the head T.T.E. posted at Saharsa and he is earning salary of Rs. 1,25,000/- per month and besides the aforesaid income, appellant has three bigha of land in Naubatpur and he has three storey building in Lekhanagar, Khagaul and the appellant is the lone son of his parents and mother of appellant is also earning pension. She has further stated that appellant performed second marriage and respondent has no source of income and she is entitled to recover maintenance on the basis of salary of the appellant in the light of standard of living as on this day. During cross examination, she has stated that appellant has two sons and one daughter from his second wife.

9. Kumud Kumar who has also been examined on behalf of the respondent as AW-1 has stated that appellant was the husband and one son took birth out of the wedlock of appellant and respondent. AW-1 further stated that he is cousin of the respondent. He has also reiterated that appellant is posted as Head T.T.E. at Saharsa and today he is earning salary of about Rs. 60,000/- and besides that income he has ancestral



property at Naubatpur adjacent to Chhotki Kopa. He has also reiterated that appellant has three storey building at Lekhanagar, Patna and earning monthly rent of Rs. 24,000/- and appellant's mother is also earning pension from Railway. He has specifically stated that by virtue of mutual consent, divorce has taken place between both the parties and Rs. 5,000/- per month was ordered towards monthly maintenance and said amount is not enough to fulfill the necessity of respondent as on this day.

10. Respondent has submitted salary slip of April, 2018 which clearly indicates that gross salary is Rs. 79,922/- and net pay is Rs. 68,925/-. Salary slip of May 2018 clearly indicates that gross pay is Rs. 1,25,306/- and net pay is Rs. 1,14,309/-.

11. It is necessary to analyze the evidence of OPW-3 who is the appellant. He has stated that respondent is the divorced wife and appellant has one son with the respondent who is aged about 24 years. He further stated that he solemnized the marriage with Sangam Sneha @ Rinki Devi and he has two sons and one daughter out of the wedlock of second wife and he himself has to bear the responsibility for incurring the expenditure for the study of three children including tuition fee and other fees. He further stated that his second wife is suffering



from thyroid and other ailment and for the purpose of her treatment also he has to maintain his second wife. He has further stated that the respondent has sufficient source of income and she got the income from rent, coaching and N.G.O. and respondent's son is also earning person. During cross examination, he has admitted that he got salary of about Rs. 75,000/- in April, 2022 and he has building at Lekhanagar in the name of his mother and his mother is pension holder. He has stated that he could not submit the documentary proof regarding the source of income of respondent from rent, coaching, N.G.O. etc. He has also admitted in para-23 that he was posted as Head TTE in Railway.

12. OPW-1 Kamlesh Sharma is the cousin and OPW-2 is wife of appellant. Both witnesses admitted that appellant is T.T.E. and appellant performed second marriage. Both witnesses have supported this fact that the appellant has ancestral property.

13. Exhibit-2 clearly indicates salary details of appellant and the said exhibit signifies that average gross salary is not less than Rs. 95,000/- per month and even in most of the months, his average gross salary is more than rupees one lakh. Further, average deduction varies from Rs. 11,000/- to Rs.



18,000/- per month and said deduction includes allowance of Rs. 5,000/- per month. Besides said salaried income, income from other sources such as income from agricultural land as well as income from rent cannot be ruled out in favour of the appellant. Any personal deduction of the appellant cannot be deducted for the purpose of calculation of maintenance.

14. We would like to refer Section 25 of the Hindu Marriage Act, 1955 which reads as under:-

25. *Permanent alimony and maintenance*-(1) *Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant [the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.*

(2) If the court is satisfied



that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

15. In the present appeal, the learned Additional Principal Judge, Family Court has enhanced the alimony amount from Rs. 5,000/- to Rs. 18,000/- as per statutory requirement. While exercising the power under Section 25(2) of the Hindu Marriage Act, court would have regard to the "change in the circumstances of either party."

16. From perusal of the record, it is admitted fact that the appellant is Head T.T.E. in Railway Department. It is also an admitted fact that Rs. 5,000/- per month was allowed to pay in favour of the respondent by virtue of order dated 19.09.2008 passed in Matrimonial Case No. 18 of 1998 and since the initial order of maintenance i.e. 19.09.2008, near about seven years have already been elapsed and thereafter application for enhancing the maintenance allowance has been filed in the year 2015 and Additional Principal Judge, Family Court, Patna passed the order of enhancement on 21.07.2023. When we are computing from the period of initial allowance i.e. Rs. 5,000/- in



favour of the respondent, more than 07 years have elapsed as on enhancement application in the year 2015. The person who is government employee in Railway Department and posted as Head T.T.E., prudently and pragmatically it cannot be denied that his salary has been enhanced from time to time keeping in view the costly affairs of day to day life. The appellant himself admitted in his evidence that he is earning salary not less than Rs. 75,000/- at the time of adducing evidence. The respondent has also admitted in her evidence that her husband was earning salary of Rs. 1,25,000/- Respondent has also submitted salary slip of May, 2018 which clearly reveals that her husband gross salary is Rs. 1,25,306/- It is also an admitted fact that besides the income from salary, appellant has ancestral property and three storey building is also in the name of his mother and his mother is pension holder.

17. Since September, 2008, the respondent was paid maintenance allowance of Rs. 5,000/- per month which was not in consonance with the daily expenditure of day to day life of respondent as she has to bear responsibility of study of her lone son for which she has incurred expenditure by taking loan for pursuing study of her son.

18. From perusal of Exhibit-1/1, it is crystal clear



that the appellant salary is not less than Rs. 1,00,000/- (Rs. One lakh) and initially wife is getting alimony of Rs. 5,000/- which has been enhanced to Rs. 18,000/-. Following **Kulbhushan Kumar v. Raj Kumari** reported in (1970) 3 SCC 129, in this case, it was held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent-wife. The said principle has also been followed by the Hon'ble Apex Court in **Kalyan Dey Chaudhary v. Rita Dey Chaudhary Nee Nandy** reported in (2017) 14 SCC 200. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependent on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors. Since net salary of husband is Rs. 1,14,309/- in the month of May, 2018, then Additional Principal Judge, Family Court was justified in enhancing the permanent alimony in favour of the respondent and the order dated 21.07.2023 passed by learned Additional Principal Judge, Family Court, Patna in Miscellaneous Case No. 06 of 2015 is justified and legal. Hence, appellant has not made out a case so as to interfere with the order passed by the Family Court.



19. Accordingly, the present appeal stands dismissed.

20. Appellant is hereby directed to calculate arrears of maintenance and remit in Respondent's Bank account within three months from today. Respondent is hereby directed to furnish her bank account at the earliest.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	AFR
CAV DATE	08.04.2024
Uploading Date	26.04.2024
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