

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1071 of 2017**

Vishvajit Kumar S/o Vijay Kumar Sinha, R/o Village and P.O. Bheria, P.S. Chandi Town and District- Nalanda, Bihar.

... .. Petitioner

Versus

Shweta @ Shaweta Kumari W/o Vishvajit Kumar D/o Chaudhary Yugeshwar Prasad, R/o Flat No. 102, Block- C, Nutan Tower Apartment, P.S. Kankarbagh, Town and District Patna, Bihar.

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Sandeep Kumar, Adv. Mr. Nikhil Agrawal, Adv. Ms Aditi Hansaria, Adv. Ms Deepika Sharma, Adv.
For the Respondent/s	:	Mr. Anshul, Adv. Mr. Sachidanand Swaroop, Adv. Mr. Rajesh Ranjan, Adv.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 12-07-2019

Heard learned counsel for the petitioner and learned counsel for the respondent.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 24.04.2017 passed by the learned Principal Judge, Family Court, Patna in Maintenance Case No. 253(M)/2015 whereby he has allowed the petition of the respondent and granted her interim maintenance of Rs.12,000/- per month (including the amount of Rs.8,000/- already being received by her) and Rs.3,000/- per month to her son and Rs.10,000/- as litigation cost.



3. Mr. Sandeep Kumar, learned counsel appearing for the petitioner submitted that the interim maintenance determined by the Family Court is unfair and grossly disproportionate. The said determination has been made without properly appreciating the facts and circumstances of the case and without appreciating that no new ground was available to the respondent for enhancement of maintenance allowance already granted by the High Court. The Family Court also failed to appreciate that the respondent had left her matrimonial house for which the petitioner had to file a petition for restitution of conjugal rights vide Matrimonial Case No. 371 of 2010. It had also failed to appreciate that the petitioner was forced to leave his job as a marine engineer and take a job at a private firm having a meagre salary of Rs.12,000/- per month out of which he has to maintain his parents, unmarried sister and himself also. It has also failed to appreciate that the respondent has suppressed the fact that she is a well educated woman and is also employed as teacher in B.D. Public School, Hajipur where she is earning more than the petitioner.

4. Per contra, learned counsel appearing for the respondent submitted that there is no error in the impugned order passed by the court below. It has appreciated the facts and circumstances of the case and has awarded minimal maintenance



allowance which warrants no interference by this Court. He contended that the respondent had pleaded in her application that the petitioner is a marine engineer and is earning Rs.5 lakhs per month as salary and has also has a piece of land at Patna and about 5 acres of agricultural land in Village Baheria, P.S. Chandi in the district of Nalanda, from which he earns Rs. 3 lakh per year. He urged that the respondent has no income and is living in her parents house along with her son. He contended that it is true that while considering the pre-arrest bail application of the petitioner, a Bench of this Court had allowed his application subject to payment of Rs.8,000/- per month to the respondent. However, the said order was passed in a criminal case instituted at the behest of the respondent wife, as one of the conditions for grant of bail. The amount so awarded was neither in a proceeding under Section 125 of the Code of Criminal Procedure (for short 'Cr.P.C') nor under Section 24 of the Hindu Marriage Act. He argued that the court below has already taken into consideration the fact that the respondent is getting Rs.8,000/- per month pursuant to the order passed by this Court and then ordered that the amount awarded to the petitioner should be paid to the respondent after deducting Rs.8,000/- per month as awarded by the High Court. He has further contended that the respondent has specifically stated in her



application that she has no source of income and in order to look after her parents and child she had to leave her job long back in 2015 itself and since then she is having no independent source of income.

5. Having heard arguments advanced on behalf of the parties and perused the materials on record, it is to be seen as to whether the order impugned passed by the court below is perverse or without jurisdiction in the present application under Article 227 of the Constitution of India.

6. The admitted facts of the case are that the petitioner was married to the respondent on 06.02.2006. Out of the said wedlock a son was born on 10.11.2008. On 27.06.2012, the respondent filed an FIR bearing Kankarbagh P.S.Case No. 274 of 2012 inter alia under Section 498-A of the Indian Penal Code against the petitioner. In the said police case the petitioner was granted pre-arrest bail vide order dated 12.08.2014 passed in Cr.Misc. No. 4517 of 2013 wherein he had agreed to pay Rs.8,000/- per month to the respondent. On 04.06.2015, the respondent filed an application under Section 125 of the Cr.P.C seeking maintenance of Rs.1,50,000/- per month from the petitioner.



7. In her application filed under Section 125 of the Cr.P.C, the respondent has pleaded that she was subjected to cruelty by the petitioner and was compelled to leave her matrimonial house and, thus, she is staying in her parents house. She has further stated that the petitioner is a Marine Engineer and is earning a salary of Rs.5 lakhs per month. He owns a plot in Patna and about 5 acres agricultural land in his village home. He earns Rs.3 lakh per year from his landed property. She has further pleaded that she has no income of her own and is living in her parents home along with her son. On such plea, she had prayed that the petitioner be directed to pay her Rs.1,50,000/- per month as maintenance allowance. Subsequently, she filed an application claiming ad interim maintenance allowance.

8. Upon notice, the petitioner appeared and filed his rejoinder to the petition filed for grant of interim maintenance wherein he has pleaded that the application for grant of interim maintenance is not maintainable. He has not denied the fact that he is not a Marine Engineer or that he was not earning Rs.5 lakhs per month as salary while being employed as a marine engineer. However, a plea has been taken that because of false implication in criminal case, he had to leave his job and is now employed in a private firm where he is getting a salary of Rs.12,000/- per month



and, out of the said Rs.12,000/-, he is paying Rs.8,000/- per month to the respondent in compliance with the order passed by the High Court in Cr.Misc. No. 4517 of 2013 and is left with Rs.4,000/- per month for his own sustenance. He has also taken a plea that he has to maintain his aged parents and unmarried sister. He has further pleaded that the respondent is a highly educated lady and is teaching in B.D. Public School, Hajipur, Vaishali and is earning Rs.15,000/- per month as her salary.

9. The respondent has controverted the claim of the petitioner that she is employed as a teacher in B.D. Public School, Hajipur. She has stated that though she had joined the school, but had to resign on 01.08.2015 in order to take care of her minor son aged 8 years.

10. Having considered the rival submissions, the court below vide impugned order dated 24.04.2017 allowed the application of the respondent and directed the petitioner to pay interim maintenance allowance in the manner indicated above.

11. Being aggrieved by the impugned order dated 24.04.2017, the petitioner has preferred the instant application under Article 227 of the Constitution of India.

12. Primarily, the petitioner has challenged the order impugned on four grounds. They are :



- (i) That the respondent wife has left the matrimonial house out of her own sweet-will for which the petitioner had to file a petition for restitution of conjugal rights;
- (ii) That the petitioner was forced to leave his job as a Marine Engineer and take a job in a private firm having meagre salary of Rs.12,000/- per month;
- (iii) That the respondent is well educated lady and is employed as a teacher in B.D. Public School, Hajipur and is earning more than the petitioner; and
- (iv) That the petitioner is paying Rs.8,000/- per month to the respondent wife as directed by the High Court at the time of grant of pre-arrest bail.

13. By the Code of Criminal Procedure (Amendment) Act, 2001 (Act 50 of 2001) with effect from 24.09.2001, the upper limit of maintenance of Rs.500/- per month in Chapter IX of the Cr.P.C has been abolished. The amendment introduces the right to, and enforcement of, interim maintenance. The expenses of proceedings can also be claimed by the applicant under the amended provisions of Chapter IX of the Cr.P.C. A proceeding under Section 125 of the Cr.P.C is summary in nature. At this stage, it is not expected from the court to adjudicate the intricacies



of dispute between the husband and wife in order to find out who was wrong.

14. It is an admitted fact that the petitioner is being prosecuted in a criminal case for subjecting the respondent wife to cruelty. Merely because a case for restitution of conjugal right has been filed by the petitioner, the same cannot be made a ground for non payment of interim maintenance allowance. Furthermore, if the wife alleges that she is subjected to cruelty in her matrimonial house, she cannot be compelled to live in her matrimonial house to suffer insurmountable mental and physical torture. She cannot be denied payment of maintenance allowance in such circumstance on the ground that she has willfully left the matrimonial house.

15. It is also an admitted fact that the petitioner was directed to pay Rs.8,000/- per month to the respondent wife as a condition for grant of pre-arrest bail in the criminal case instituted by the wife against him. It is also not in dispute that while passing the order impugned, the Family Court has taken into account the fact that the petitioner has been directed to pay Rs.8,000/- per month to his wife as a condition for pre-arrest bail.

16. Regard being had to the order passed by this Court in an application filed under Section 438 of the Cr.P.C, while granting the wife interim maintenance of Rs.12,000/- per month,



the Family Court directed that the payment will be made after deducting Rs.8,000/- already being received by her from her husband under the order passed by the High Court. Thus, in effect, no additional burden has been imposed upon the petitioner.

17. As far as the claim of the petitioner that the respondent wife is having sufficient source of income as she is employed as a teacher in B.D. Public School, Hajipur is concerned, on perusal of the materials on record, the Family Court came to the conclusion that though she had joined the school on 01.07.2013, she resigned on 01.08.2015. The petitioner failed to produce any evidence on record to suggest that when the order impugned dated 24.04.2017 was passed, the respondent wife was employed as a teacher in the B.D. Public School, Hajipur. While passing the order impugned, the Family Court has taken into consideration the fact that the petitioner has not denied that his earning was Rs.5 lakh per month while he was working as a Marine Engineer.

18. It is true that the petitioner has pleaded before the Family Court that due to institution of the criminal case against him, he had lost his job as Marine Engineer and is forced to take a job at a private firm having meagre salary of Rs.12,000/- per month, but since no document was produced in order to show that



he had lost his job as a Marine Engineer, the Family Court raised doubt about the contention. It also doubted the contention of the petitioner that he is presently earning only Rs.12,000/- per month while doing job in a private firm. It held that looking at the qualification and ability of the petitioner, it is unbelievable that the petitioner would have agreed to accept a job for a meagre salary of Rs.12,000/- per month.

19. Considering the facts and circumstances of the case, since nothing was placed on record before the Family Court to prove the employment and earnings of the respondent wife, the Family Court rightly allowed the claim for interim maintenance allowance.

20. The petitioner being a highly educated and an able bodied person, who admits to be capable of earning in 5 digit cannot make institution of the criminal case against him as an excuse for denial of maintenance allowance to his wife and child, who are not capable to maintain themselves.

21. The following observations of the Supreme Court in ***Bhuvan Mohan Singh v. Meena*** since reported in ***AIR 2014 SC 2875*** is relevant in this regard :-

“Be it ingeminated that Section 125 of the Code of Criminal Procedure (for short “the Code”) was conceived to ameliorate the agony, anguish,



financial suffering of a woman who left her matrimonial home for the reasons provided in the provision so that some suitable arrangements can be made by the court and she can sustain herself and also her children if they are with her. The concept of sustenance does not necessarily mean to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else. She is entitled in law to lead a life in the similar manner as she would have lived in the house of her husband. That is where the status and strata come into play, and that is where the obligations of the husband, in case of a wife, become a prominent one. In a proceeding of this nature, the husband cannot take subterfuges to deprive her of the benefit of living with dignity. Regard being had to the solemn pledge at the time of marriage and also in consonance with the statutory law that governs the field, it is the obligation of the husband to see that the wife does not become a destitute, a beggar. A situation is not to be maladroitly created whereunder she is compelled to resign to her fate and think of life "dust unto dust". It is totally impermissible. In fact, it is the sacrosanct duty to render the financial support even if the husband is required to earn money with physical labour, if he is able-bodied. There is no escape route unless



there is an order from the court that the wife is not entitled to get maintenance from the husband on any legally permissible grounds.”

22. The quantum of interim maintenance amount determined by the Family Court, if not on a lower side, certainly appears to be just and proper. The plea of the petitioner that he does not have sufficient source of income to pay the determined amount to his wife and child is no answer as he is not only an able bodied person having good health and physique but also qualified enough to earn salary in 5 digit per month.

23. Regard being had to the discussions made hereinabove, I am of the considered opinion that the order impugned is neither perverse nor without jurisdiction, hence, the same requires no interference by this Court.

24. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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