

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.387 of 2019**

Anjani Kumar @ Pintu, Son of Damodar Prasad, Resident of Kasyap Nagar,
New Police Line, Police Station- Ara Nawada, District Bhojpur.

... .. Petitioner

Versus

Priya Devi @ Soni Wife of Anjani Kumar, daughter of Late Surendra Prasad
Sinha, 15 B, Ashok Nagar, Police Station- Kankarbagh, District- Patna.

... .. Respondent

Appearance :

For the Petitioner : Mr.Makardhwaj Upadhyay, Advocate
For the Respondent : Mr.

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

Date : 05-07-2019

This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 25.05.2018 passed by the learned Principal Judge, Family Court, Bhojpur, Ara whereby he has directed the petitioner to pay ad-interim maintenance to the respondent amounting to Rs.8000/- per month from the date of filing of the suit and Rs.20,000/- as cost of litigation to the respondent herein.

2. Learned counsel for the petitioner submitted that the petitioner had initially filed Matrimonial Case No. 6 of 2011 under Section 9 of the Hindu Marriage Act for restitution of conjugal rights. Since the respondent did not join in the said case in spite of due service of notice, the said case could not proceed. Subsequently, the respondent filed a complaint vide Complaint Case No. 77C of 2015 in the court against the petitioner inter alia



under Section 498A of the Indian Penal Code. He submitted that as a matter of fact, the respondent has herself deserted the petitioner and is not willing to live in her matrimonial home. Left with no other option the petitioner filed Matrimonial Case No. 279 of 2013 seeking decree of divorce. Considering the aforesaid aspects, the trial court ought to have rejected the application filed on behalf of respondent but erroneously it has allowed the application of the respondent and directed the petitioner, who is working as an agent in Sahara India to pay Rs.8000/- per month as maintenance allowance. According to him, the order impugned is erroneous in law and is fit to be set aside.

3. Having heard learned counsel for the petitioner and perused the materials on record, I find that the petitioner has filed Matrimonial Case No.279 of 2013 seeking a decree of divorce. After filing of the Matrimonial Case No.279 of 2013, the respondent has filed Complaint Case No. 77C of 2015 against the petitioner under Section 498 A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act alleging therein that she was married to the petitioner on 21.06.2010. After marriage, she was subjected to cruelty in various ways for non-fulfillment of demand of dowry. The said complaint case is still pending.



4. In her application, she has stated that the petitioner owns a three-storied house out of which two stories have been given on rent. The petitioner earns Rs. 15,000/- per month as rent. He also owns two vehicles, namely, Bolero and vehicle, which plies on hire. He also runs a poultry firm and is engaged in trade of share. Apart from the income of the aforesaid sources, he is also working as an agent of Sahara India. She has further stated that the total income of the petitioner is about Rs. 3 lakhs per month out of the different trade and business being done by the petitioner. She has also stated that she does not have any income and is totally dependent on his brothers whose economic condition is itself bad. On the basis of the aforesaid pleas, the respondent claimed Rs. 30,000/- per month as an interim maintenance allowance.

5. The petitioner contested the claim of the respondent. He has stated in his reply to the claim made by the petitioner that the brother of the respondent is a businessman and his monthly income is about 1 lakh. He also owns a house in Kankarbagh Colony, Patna, which is fitted with all modern appliances. The respondent is also a working lady and earns about Rs. 30,000/- per month. He has denied having any vehicle or medical agency or poultry firm of his own. However, he has admitted that he works as an agent in Sahara India and out of the income from the agency



somehow he is able to lead his life. On such pleas, he has made a request to the Court to dismiss the application filed by the respondent under Section 24 of the Hindu Marriage Act.

6. Having appreciated the rival submissions, the court below has directed the petitioner to pay interim maintenance allowance amounting to Rs. 8,000/- per month from the date of filing of the suit and Rs.20,000/- as cost of litigation to the respondent.

7. As far as the factum of marriage is concerned, the same is not disputed. Though, the petitioner has disputed his income from various sources, as stated by the respondent, he has admitted that he is working as an agent in the Sahara India. He has not brought on record anything to suggest that the respondent is a working lady. The statement made by the petitioner that the respondent is earning Rs.30,000/- per month from her private job is not corroborated by any oral or documentary evidence. That apart, the ground taken by the petitioner that since the respondent is not living in her matrimonial house and has herself deserted the petitioner is no ground for denying her maintenance. It is not disputed that the respondent has filed a case inter alia under Section 498A of the Indian Penal Code against the petitioner, which is still pending in the court. If the wife alleges that she is



being subjected to cruelty in her matrimonial home, she has a right not to live in her matrimonial home in order to save herself from further torture.

8. It is true that wife's income has to be taken into account while determining the amount of maintenance payable to her. However, in absence of any proof of employment of the respondent, the court below has rightly directed the petitioner to pay maintenance allowance to his wife.

9. In **Sunita Kachwaha and Ors. vs. Anil Kuchwaha [(2014) 16 SCC 715]**, the Supreme Court has held that even if the wife was earning some amount, that may not be a reason to outrightly reject her maintenance application.

10. The amount allowed as interim maintenance allowance is neither unreasonable nor unjustified. The order impugned needs no interference by this Court in exercise of power conferred under Article 227 of the Constitution of India.

11. The application is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
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