

Arun Kumar Sao Vs. State of Bihar

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Court : Patna

Decided On : Feb-28-2006

Judge : Rekha Kumari, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Criminal Misc. No. 14462 of 2005

Appellant : Arun Kumar Sao

Respondent : State of Bihar

Disposition : Appeal dismissed

Judgement :

Rekha Kumari, J.

1. This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) for quashing the order dated 11.1.2005 passed by the learned Sessions Judge, Nawadah in Criminal Revision No. 136 of 2004 by which he has affirmed the order dated 17.9.2004 passed by Sri Om Prakesh, J.M. 1st Class, Nawadah in Misc. Case No. 30 of 2003 granting ad interim maintenance to the wife and the two minor children at the rate of Rs. 750/- in total per month.

2. Heard.

3. Learned Counsel for the petitioner submitted that the petitioner is ready to maintain his wife and children. Hence, there is no question of granting any ad interim maintenance. He also submitted that that the wife had refused to live with the petitioner and hence, under the law she is not entitled to get maintenance from him. Besides this, the petitioner is a labourer and is not in a position to pay separate maintenance to the wife and children, though he is ready to maintain them if they live with him. The petitioner has also other family members to maintain.

4. The impugned order shows that the learned Magistrate has found that the petitioner is not ready to keep his wife. The two children are also minor living with the wife. The learned Sessions Judge also held that even if the petitioner is a daily wage earner it must be earning about Rs. 1800 - 2000 per month and, therefore, the quantum of maintenance for three persons was not excessive. The Learned Sessions Judge, hence, affirmed the order of the learned Magistrate.

5. I do not find any infirmity in the impugned order. In order to grant ad interim maintenance the Magistrate is required to see prima facie whether the ingredients required for granting maintenance are present or not.

6. In this case admittedly, the wife is the legally married wife of the petitioner and the two children were born from the wed lock and are minors and are living with her. It is not denied that the wife is living separate from her husband. It is also not the case of the petitioner that the wife has means to maintain herself or the children. The petitioner admittedly is not maintaining his wife and the children. The findings of the learned Sessions Judge that the petitioner must be earning about Rs. 2000/- per month cannot also be said to be erroneous. Hence, all the requirements for granting maintenance are, prima facie, present in this case.

7. Therefore, the learned Sessions Judge was justified in affirming the order of the learned Magistrate granting ad interim maintenance to the wife and the two children of the petitioner. The amount of maintenance also does not appear to be excessive.

8. In the result, there appears to be no reason to interfere with the impugned order. This application is thus dismissed.

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