

**BIHAR HUMAN RIGHTS COMMISSION**  
**9, Bailey Road, Patna – 15**

File No **BHRC/COMP.** 1437/09

Case of **SAVITA DEVI**

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The complaint of applicant Savita Devi is about non-implementation of the order of Judicial Magistrate Purnea dated 25.4.2000 in Maintenance Case No.79/93. By the said order the learned magistrate directed applicant's husband Chandrakant Jha to pay maintenance to the applicant and her minor son @ Rs.500 each per month in a proceeding under section 125 Cr.P.C.

Chandrakant Jha is a government employee working in the Forensic Science Laboratory (FSL) Bihar. Notice was accordingly issued to Director, FSL on 29.4.2011 as to why the amount of maintenance cannot be deducted from the salary of Chandrakant Jha and paid to the applicant, vide order dated 29.4.2011. It transpired later that the amount Chandrakant Jha was required to pay had accumulated to Rs,2,16,000 up to December 2011 out of which sum of Rs.15,000 only had been realised from his salary and paid to the applicant. It also came to Commission's notice that Chandrakant Jha was due to superannuate from service on 31.1.2015. After calculating the dues it was found that if deduction @ 7,000 per month is made from his salary, the arrear and the current maintenance would stand realised and paid to the applicant by January 2015. The Commission accordingly vide order dated 28.2.2012 directed Director FSL to deduct sum of Rs. 7000 per month from his salary and deposit the same in the bank account of the applicant per month. It may be mentioned that Chandrakant Jha had refused to participate in the proceedings for 'personal reasons' – as noted in the order dated 24.2.2012.

Be that as it may, in terms of the said order dated 28.2.2012 deductions @ Rs. 7000 were made but for two months only. After the system of payment of salary became 'on-line', difficulty arose in making payment of part amount to Chandrakant Jha and the applicant. In fact, Chandrakant Jha also served legal notice on the Bank. In the circumstances, notice was issued to Chandrakant Jha and the matter was finally heard in presence of the applicant's representative Yugal Kishore Jha, Chandrakant Jha and the representatives of the FSL and the State Bank of India, Bailey Road Branch on 3.4.2013.

At the time of hearing Sri Chandrakant Jha filed written objection opposing the applicant's claim. He took a stand that the marriage of the applicant was not valid and that he has filed application – registered as Miscellaneous Case No.9/13 – for 'cancellation' of the order dated 25.4.2000 (supra). In fact, it was stated

that applicant also has filed application registered as Misc. Case No.29/12. It was argued that in view of the said two cases, the Commission should not pass any order as the matter is sub judice.

On behalf of the applicant it was stated that Chandrakant Jha had challenged the magistrate's order in the Patna High Court in Cr. Revision no.328/2000 which was rejected on merit by order dated 14.3.2001. In the said revision, among other things he had taken the plea of invalidity of marriage but the plea was rejected by the High Court. It was thus submitted that magistrate's order having been upheld by the High Court, he cannot challenge the order at this stage. The Commission finds substance in the stand of the applicant.

Filing of Misc. Case No.9/13 (supra) by Chandrakant Jha appears to be a frivolous exercise and in any case the Commission cannot collaterally go behind magistrate's order particularly when the order was upheld by the High Court. So far as Misc. Case No.29/12 is concerned it seems that the applicant was not being paid the amount of maintenance for over a decade and she filed the miscellaneous application as account of financial problems involving her livelihood. The Commission is of the view that recourse to the procedure under the Cr.P.C. for execution of the order under section 125 is a cumbersome process and virtually counter productive of the object underlying the maintenance order. Since the question of livelihood is involved the Commission is of the view that it should not stay its hands merely because two miscellaneous cases have been filed in the Family Court. The Commission is also of the view that the magistrate's order directing maintenance to the applicant and her minor son deserves to be implemented as part of protection of their rights. The Commission thus rejects the objections raised by Chandrakant Jha.

In course of hearing on 3.4.2013 the representatives of the SBI Bailey Road Branch Sri Kumar Vishwajit stated that if the Commission passes an order directing the bank to pay/credit certain amount into the account of the applicant – out of the salary of Chandrakant Jha, the amount shall be credited to the applicant's account after debiting the same from his account.

As indicated above, the total maintenance dues up to December 2011 had accumulated Rs.2,16,000. The amount (@ Rs.7000) was worked out on the basis of the amount then found due and his date of retirement. More than a year has since passed and the amount due apparently must have increased, for, no payment has been made to the applicant from the salary of the Chandrakant Jha except for two months. In this view of the matter, the Commission directs, Director FSL to re-work out the amount due from Chandrakant Jha up to date in terms of magistrate's order and re-determine the amount to be deducted from

his salary every month so that the arrear is wiped out and the current maintenance is paid by 31.1.2015. After determining the amount, intimation shall be sent to the SBI Bailey Road Branch and on receipt of such intimation, the Bank will deduct/debit the amount from the account of Chandrakant Jha and pay/credit the amount in the account of the applicant every month.

Report as above should be submitted by both Director FSL and the Manager Bailey Road Branch of SBI by 10.5.2013.

Copy of this order may be sent to (i) applicant (ii) Director FSL, Bihar (iii) Manager, SBI Bailey Road Branch, Patna and (iv) Chandrakant Jha, care of Director FSL, Bihar.

Date: 15.04.2013

Justice S.N. Jha  
Chairperson