

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.587 of 2014

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1. Md. Kurban Ali Son of Late Ashique Ali resident of village- Muslim
Tola Bhatti, P.S.- Sabour, District- Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Bibi Rabisa Khatoon Wife of Md. Kurban Ali, daughter of Md. Ghulam
Ali
3. Md. Irfan Minor Son of Md. Kurban Ali
4. Kashish Minor daughter of Md. Kurban Ali Respondent nos. 2 to 4 are
resident of Sultanpur Bhatti, P.S.- Sabour, District- Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Adv.
With Mr. Rajesh Kumar
For the Respondent/s : Mr. Surendra Kumar(App)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

6 07-12-2016

Heard learned counsel for the parties.

2. This application has been filed under Section 19(4)
of the Family Court Act seeking revision of the order, dated
18.04.2013 passed by the learned Principal Judge, Family Court,
Bhagalpur, whereby he has directed payment of maintenance at
the rate of Rs. 2000/- to Opposite party No.2 and Rs. 1,000/- each
to Opposite party Nos. 3 and 4. There is no dispute that the
Opposite party No.2 is the wife of the petitioner, whereas
Opposite party Nos. 3 and 4 are his minor son and daughter. The
order for maintenance as indicated above, has been passed in
exercise of power under Section 125 of the Code of Criminal



Procedure, 1973 (hereinafter referred to as the Code).

3. By an order, dated 14.11.2014, passed in this case, this Court, while issuing notices to Opposite party Nos. 2 to 4 had observed that in the meantime, the petitioner would be expected to make payment of maintenance amount at the rate of Rs. 1,000/- each per month to the Opposite party Nos. 2 to 4 from the date of the order of the learned Court below.

4. Mr. Ramakant Sharma learned Senior counsel appearing on behalf of the petitioner has submitted that considering the income of the petitioner as *Choukidar*, which is Rs. 12,000/- per month, order of payment of maintenance at the rate of Rs. 4,000/- per month to the Opposite party No.2 and the children is excessive. He has also submitted that Opposite party No.2 has deserted the petitioner and, therefore, she is not entitled for any maintenance in terms of Section 125 of the Code. He has lastly submitted that the impugned order, dated 18.04.2013 has been passed *ex parte*. According to him, the petitioner had not received any notice/summons said to have been issued in the concerned Misc. Case No. 36 of 2011 and without verifying the service of summons, learned Court below passed the *ex parte* order.

5. So far as quantum of amount of maintenance is



concerned, in my view, it cannot be said to be excessive in the background that even if it is presumed that the income of the petitioner is Rs. 12,000/- per month. By the impugned order, he has been made to pay a sum of Rs. 4,000/- total for maintaining his wife and two minor children.

6. However, since a submission has been made that the Opposite party No.2 has deserted the petitioner and, therefore, she is not entitled for any maintenance under Section 125 of the Code and the petitioner could not raise such plea before the Court of learned Principal Judge, Family Court, Bhagalpur, in the absence of service of summons; without interfering with the impugned order, I observe that if the petitioner applies before learned Principal Judge, Family Court, Bhagalpur for recall or modification of the order impugned on the ground as aforesaid, the same shall be considered and adjudicated upon in accordance with law. The court below shall proceed to consider the petitioner's case only if it is satisfied that there is no proof of service on summons/notice on the petitioner in the said maintenance case.

7. This application stands disposed of with the observation as above.

(Chakradhari Sharan Singh, J)

ArunKumar/-

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