

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.27560 of 2016

=====

Gulamuddin @ Gulamouddin, son of late Salam Miyan, R/o Village –
Dumraon, Thatheri Bazar, P.S. Dumraon, Dist. Buxar.

.... Petitioner/s

Versus

1. Shalma Begum, wife of Gulamuddin, R/o Mohalla – Kazi Mohalla,
Braham Baba Gali, Dumraon, P.S. Dumraon, Dist. Buxar,
2. The State of Bihar.

.... Opposite Party/s

=====

Appearance:

For the Petitioner/s : Mr. Anil Kumar Roy, Advocate.

For the Opposite Party/s : Mr. Rajendra Nath Jha, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

2 01-08-2016 Heard both sides.

The petitioner filed this petition for quashing the order dated 30.03.2016, passed by the learned Principal Judge, Family Court, Buxar in Misc. Case No. 8 of 2011, by which the learned Principal Judge, Family Court remanded the petitioner to custody on 30.03.2016 for non-payment of the maintenance amount.

Brief facts which are relevant for disposal of this case are as follows:-Shalma Begum filed a petition for her maintenance being Maintenance Case No. 20(M) of 1998. The court, vide order dated 19.09.2000, directed the petitioner husband to pay a sum of Rs. 450/- per month for the maintenance of his wife. The



petitioner husband preferred revision petition, which was also dismissed, but the petitioner husband did not pay any maintenance to his wife. The wife Shalma Begum filed a petition under Section 127 of the Code of Criminal Procedure, which was numbered as Misc. Case No. 8 of 2011, for enhancement of her maintenance amount from Rs. 450/- to Rs. 4,000/- per month. In the aforesaid case, notice was issued to the petitioner husband but the petitioner husband did not appear. Thereafter, distress warrant was issued and, in consequence thereof, the petitioner was apprehended on 30.03.2016 and he was remanded to custody.

It is submitted by the learned counsel for the petitioner that distress warrant cannot be issued in a proceeding under Section 127 of the Code of Criminal Procedure. For enforcement of any order passed under Section 125 of the Code of Criminal Procedure, a petition under Section 128 of the Code of Criminal Procedure should have been filed but, in the present case which was filed for enhancement of maintenance, distress warrant was issued which is illegal. It is further submitted that Section 125 sub-clause (3) of the Code of Criminal Procedure empowers the court to only pass sentence for one month or till payment is made, whichever is earlier, but the petitioner is in jail since 30.03.2016. The petitioner remained in jail for more than four weeks for one

default which is illegal.

Learned counsel for the opposite party wife submitted that of course, no distress warrant should have been issued in a proceeding under Section 127 of the Code of Criminal Procedure. The wife never filed any petition under Section 128 of the Code of Criminal Procedure for enforcement of the order passed in a proceeding under Section 125 of the Code of Criminal Procedure.

It is evident from the order sheets itself that the order granting maintenance of Rs. 450/- was passed on 19.09.2000 but the wife never filed any petition for enforcement of the order passed under Section 125 of the Code of Criminal Procedure. The present Misc. Case No. 8 of 2011 was filed under Section 127 of the Code of Criminal Procedure for enhancement of maintenance amount but, in the aforesaid proceeding, distress warrant was issued. On the face of it, it appears that the learned Principal Judge, Family Court, Buxar has acted illegally and committed jurisdictional error in issuing the distress warrant in a proceeding under Section 127 of the Code of Criminal Procedure. Moreover, the petitioner is in jail since 30.03.2016 and the custody of the petitioner for default of non-payment of maintenance for more than one month itself is illegal under Section 125(3) of the Code

of Criminal Procedure. Accordingly, the aforesaid order dated 30.03.2016, passed by the learned Principal Judge, Family Court, Buxar in Misc. Case No. 8 of 2011, is set aside and the petitioner is directed to be set at liberty at once.

This application is accordingly allowed.

(Prabhat Kumar Jha, J)

Dilip/-

U		T	
---	--	---	--