

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.563 of 2016

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Md. Barik, S/o- Late Md. Haroon, Resident of Village- East Gharari, P.O.-
Kharik Bazar, P.S.- Kharik (Naugachia), District-Bhagalpur.

.... Petitioner

Versus

1. The State of Bihar through Chief Secretary, Bihar, Patna.
2. Bibi Akila Bano, W/o- Md. Barik, D/o- Md. Niyamat,
3. Rubi Khatoon (minor)
4. Ruhi Khatoon (minor) Respondent No.3 and 4 are minors and represented through their mother and natural guardian Respondent No.- 2 Respondent No.2 to 4 are residing at Village- Ujani, P.O.- Maniya More, P.S.- Naugachia, District- Bhagalpur.

.... Respondents

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Appearance :

For the Petitioner : Mrs. Sarita Bajaj, Advocate

For the Respondent no.1 : Mr. Ashok Priyadarshi(GA-4)

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
ORAL ORDER

2 02-06-2016 Heard learned counsel for the petitioner and learned
counsel for the State.

It is indeed a matter of great regret that in spite of the decision of the Division Bench of this court, in the case of *Laljee Yadav Vs. the State of Bihar*, since reported in 2011 (4) PLJR 248, the learned In-charge Principal Judge, Family Court, Bhagalpur, has not followed the procedure as laid down in law and violated the petitioner's fundamental right by wrongly ordering his confinement, on failure to pay maintenance as awarded under section 125 of the Cr.P.C. in Miscellaneous Maintenance Case No. 62 of 2008 by the Court of Principal Judge, Family Court,



Bhagalpur, a Miscellaneous Execution Case was registered and in that miscellaneous Execution case, the learned Judge issued warrant of arrest and detention of the petitioner having defaulted to pay maintenance. This Court in the judgment aforesaid (Laljee Yadav) had elaborately dealt with entire procedure inasmuch as this court held that no person can be arrested by orders of the court. First upon default in payment of maintenance, as awarded in terms of section 125 Cr.P.C, it could only be recovered in the process as prescribed for recovery of fine, which would ultimately be sent to the Collector for recovery of arrears of Rent Revenue in a proceeding under the Bihar and Orissa Public Demand Recovery Act, 1914. The Court also noticed specific provisions of the Code of Criminal Procedure, which prohibited the arrest of a person. Form -18 (not Form- 15) as being used by the Principal Judge, Family Court, Bhagalpur as appended to Cr.P.C. is in respect of a person, who has been found guilty and convicted for default in payment of maintenance, which conviction has to be upon a fresh complaint for every arrears. All these have been noted in the judgment of the Division Bench, as aforesaid.

Regrettably, the learned Judge in spite of protest by the petitioner pay to take note thereof. It would be well advised for the Judge to acquaint himself with law before taking such drastic

actions. The situation being what it is clear that in defiance of law, the petitioner has been detained. Thus, the detention of the petitioner being per se illegal and without jurisdiction. It would be violated of its constitutional rights under Article 21 of the Constitution. The order issuing warrant and detaining the petitioner as passed by the Principal Judge, Family Court, Bhagalpur, is thus, set aside. The petitioner is directed to be released from civil prison forthwith, unless he is required in any other criminal case.

Let a copy of this order be communicated to the Principal Judge, Family Court Bhagalpur, for information and necessary action

This writ petition is accordingly allowed.

(Navaniti Prasad Singh, J.)

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