

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No. 258 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- BEGUSARAI

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Md. Shamim Akhtar, Son of Late Salim, Resident of Refinery Township, Barauni,
Quarter No. - D/1-193, P.S. - Town, PO - Begusarai, District - Begusarai

.... Petitioner

Versus

1. Shabina Bano @ Shabino Bano, Daughter of Md. Quamuddin, Resident of Baro Qadir Chak, PO - Baro, P.S. - Fulbaria, District - Begusarai.
2. The State of Bihar through Law Secretary, Government of Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. Anjani Kumar Jha, Advocate
Mr. Navneet Govindam, Advocate

For the Respondents : Mr. Kumari Amrita

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 20-04-2017

The petitioner has invoked the writ jurisdiction of this Court for quashment of order dated 05.01.2017 passed by the learned Principal Judge, Family Court, Begusarai in Maintenance Case No. 181M of 2014, a case under Section 125 of the Code of Criminal Procedure (in short the "Cr.P.C.") whereby maintenance has been awarded in favour of respondent no. 1 and her two children.

2. Submission of the petitioner is that an appeal is not maintainable against an interlocutory order passed under Chapter IX of the Cr.P.C. containing the provisions of Section 125 of the Cr.P.C. in view of the bar under sub-section 4 of Section 19 of the Family Courts Act, 1984. Therefore, the present writ application has been filed.

3. The impugned order has been challenged on the



ground that the children were not party to the maintenance case and in spite of that maintenance has been awarded in their favour. The learned Principal Judge has ignored the fact that though the daughter is unmarried, she is already employed, hence, she was not unable to maintain herself. He further submits that son was aged about 18 years on the date of filing of the petition, therefore, on the date of order, he was not a minor. Moreover, the wife was already divorced prior to the filing of the maintenance case, hence, the provisions of Section 125 of the Maintenance Act is not applicable.

4. The impugned order does not reveal that the above referred materials were there before the learned court below, hence, the petitioner is at liberty to raise the aforesaid issues before the learned court below who shall pass necessary order of modification of maintenance order, if needed, in view of the powers under Section 127 of the Cr.P.C.

5. With the aforesaid observation, the writ application stands disposed of.

(Birendra Kumar, J)

Kundan

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	29.04.2017
Transmission Date	29.04.2017

