IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.369 of 2016

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Pramod Sah @ Pramod Kumar Sah son of Late Narayan Sah, resident of Village- Mahthawa, P.S. Bhargama, District Araria

.... Petitioner/s

Versus

1. State of Bihar
2. Shewta Devi, D/O Sri Panchanan Prasad Sah, wife of Pramod Sah @ Pramod Kumar Sah, resident of Mohalla- Narkatiyaganj Hata Chowk, Ward No. 14, P.S. Khajanchi Hat,District- Purnea.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Amish Kumar
For the Respondent/s : Mr. Md. Aslam Ansari (App)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

4 17-04-2017 The petitioner, who is the husband of opposite party no.2, is aggrieved by the order dated 28.01.2016 passed by the learned Principal Judge, Family Court, Purnea in Maintenance Case No. 374 of 2014 whereby the petitioner has been directed to pay monthly allowance @ Rs. 5000/- under Section 125 of the Cr. P.C. to the opposite party no.2. The said order is apparently *ex parte*.

Learned counsel appearing on behalf of the petitioner has submitted that the petitioner did not have any notice with regard to filing of maintenance Case No. 374 of 2014 and, therefore, the impugned order requires interference.

In my view, the petitioner has remedy under Section 126 of the Cr. P.C. if, according to him, the said *ex parte* order

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was passed by the court below, though he had wilfully avoided the service of notice or neglected to attend the court.

The application is accordingly disposed of with an observation that the petitioner shall be at liberty to apply under proviso to Section 126 of the Cr. P.C. by making appropriate application in order to satisfy the court below that the petitioner did not wilfully avoid his appearance before the court.

It is also indicated that if any such application is filed by the petitioner before the court below and if question of limitation arises, in filing of such application under Section 126 of the Cr. P.C., the court below shall keep in mind the fact that the petitioner was pursuing his case before this Court in the proceeding.

Learned counsel for the petitioner has submitted that warrant has been issued by the court below for non-payment of maintenance allowance. It is indicated that if an application under Section 126 Cr. P.C., is filed within a period of one month from today, no coercive step shall be taken against the petitioner.

This application stands disposed of.

(Chakradhari Sharan Singh, J)

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