

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.546 of 2015

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1. Rajesh Kumar, son of Baldeo Yadav, resident of Village- Jawar, Police Station- Raisi, (O.P.- Rajaruwa), District- Purnia.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sunita Devi, Wife of Rajesh Kumar, daughter of Rajendra Yadav, resident of village- Jawar, Police Station- Baisi, District- Purnia.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vikram Singh

For the Respondent/s : Mr. Abhay Kumar 1(App)

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER**

3 31-01-2017 Heard learned Counsel for the petitioner and learned Additional Public Prosecutor representing the State.

By an order, dated 05.05.2015, passed in Maintenance Case No. 223 of 2010, learned Principal Judge, Family Court, Purnea, directed the petitioner to pay an amount of Rs. 3,000/- per month as maintenance allowance to Opposite Party No. 2, who is the wife of the petitioner.

The petitioner has challenged the said order, which has been passed under Section 125 of the Code of Criminal Procedure, 1973 (for brevity, "the Code").

Learned Counsel appearing on behalf of the petitioner, in order to assail the said order, has submitted



that Opposite Party No. 2 has got marriage and she is living with someone else.

From the impugned order, I find that no such stand was taken on behalf of the petitioner in the proceedings before the learned Court below.

A supplementary affidavit has been filed on behalf of the petitioner stating therein that he has filed an objection before the learned Court below and in his said objection, dated 20.10.2015, he has categorically stated that Opposite Party No. 2 has solemnized marriage to another man. According to him, till date, there is no adjudication of his objection. Such objection appears to have been filed in reply to an application filed on behalf of the petitioner under Section 126 (3) of the Code for recovery of the amount of maintenance, which has been directed to be paid by the learned Court below by the order impugned.

The plea that the Opposite Party No. 2 has solemnized marriage and/or is living in adultery cannot be adjudicated in the present proceeding for entertaining challenge to the impugned order.

This fact was never brought to the notice of the learned Court below at the time of passing of the impugned order. If this is a subsequent development, the petitioner



has remedy under Section 127 of the Code.

Whereas I do not find any reason to interfere with the impugned order in the present application, it is observed that it will be open to the petitioner to file an application under Section 127 of the Code before the learned Court below.

If such an application is filed by the petitioner before the learned Court below, the Court will dispose it of in accordance with law.

This application is disposed of with the observations and directions, as above.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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