

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.757 of 2016

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1. Md. Asfaque Son of Najmuddin Resident of Village- Bell Pokhar, Police Station- Paharkatta, District Kishanganj.

.... Petitioner/s

Versus

1. The State of Bihar
2. Ansari Khatoon wife of Md. Asfaque , Daughter of late Gheyasuddin
3. Jeenat Daughter of Md. Asfaque(minor) under the protection of her mother Ansari Khatoon Resident of Village- Bell Pokhar, Police Station- Paharkatta, District Kishanganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abdul Mandan Khan

For the Respondent/s : Mr. Bharat Lal, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

2 27-03-2017 Heard learned counsel for the parties.

2. The petitioner is admittedly the husband of Opposite party No.2 and father of Opposite party No.3. He has been directed to pay Rs. 4,000/- (four thousand) each to Opposite parties No. 2 and 3, by an order, dated 17.06.2016, passed in Maintenance Case No. 155 of 2012 by learned Principal Judge, Family Court, Kishanganj under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the **Code**). The petitioner is aggrieved by the said order in the present criminal revision application filed under Section 19(4) of the Family Courts Act.

3. From the impugned order, I find that the petitioner did not present himself before the Court below in



support of his case. Accordingly, based on evidence at the proceeding under Section 125 of the Code, the Court allowed the said monthly maintenance allowance as indicated above, by the impugned order.

4. Learned counsel appearing on behalf of the petitioner has submitted that because of some unavoidable circumstance, the petitioner could not present himself before the Court below for evidence. That cannot be a ground for questioning an order passed under Section 125 of the Code since the petitioner has remedy under Section 126 of the Code. Proviso to Section 126(2) of the Code reads thus:-

“Section 126 (2) * * * * *

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.”

(Emphasis supplied)

5. In such view of the matter, this application is disposed of with an observation that the petitioner shall be at liberty to apply under Section 126 of the Code on the plea of his bona fide absence in course of proceeding. It is indicated if any question of limitation arises, the Court below shall keep in mind the fact that the petitioner was pursuing his remedy before this Court, which



considering plea for condonation of delay.

6. This application stands disposed of accordingly.

ArunKumar/-

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(Chakradhari Sharan Singh, J)

