

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.840 of 2016

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

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Santosh Jha, Son of Late Kameshwar Jha, Resident of Village Charaiya, P.S. Bhargama, District Araria

.... Petitioner

Versus

1. The State of Bihar
2. Smt. Sundari Devi, Daughter of Kamdeo Mishra, Resident of Village Madanpur, P.S. Madanpur (O.P.), District Araria

.... Opposite Parties

with

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Criminal Revision No. 967 of 2016

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

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Santosh Jha, Son of Late Kameshwar Jha, Resident of Village Charaiya, P.S. Bhargama, District Araria

.... Petitioner

Versus

1. The State of Bihar
2. Smt. Sundari Devi, Daughter of Kamdeo Mishra, Resident of Village Madanpur, P.S. Madanpur (O.P.), District Araria

.... Opposite Parties

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Appearance :

(In CR. REV. No.840 of 2016)

For the Petitioner : Mr. Navjot Yesu, Advocate

For the State : Mr. Ajay Kumar-I, APP

For O.P. No.2 : Mr. Brajesh Kumar Singh, Advocate

(In CR. REV. No.967 of 2016)

For the Petitioner : Mr. Navjot Yesu, Advocate

For the State : Mr. Ajay Kumar-I, APP

For O.P. No.2 : Mr. Brajesh Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 21-08-2017

Heard learned counsel for the petitioner, learned counsel for the opposite party no.2 as well as learned Additional Public Prosecutor appearing on behalf of the State.

2. Both these petitions are being disposed of by this



common judgment as the impugned orders dated 19.12.2015 and 14.07.2016 have been passed in Miscellaneous Case No.15 of 2016 by learned Principal Judge, Family Court, Araria whereby the learned Judge directed the son of the petitioner to pay maintenance of Rs.2,000/- per month to opposite party no.2, namely, Smt. Sundari Devi. Subsequently by order dated 14.07.2016, the learned Judge directed Santosh Jha, the father of Rakesh Jha, to pay the dues of maintenance amount.

3. A brief fact of this case is that opposite party no.2 Sundari Devi filed a petition for maintenance under Section 125 Cr.P.C., 1973 in the court of Principal Judge, Family Court, Araria on 25.11.2014. Notice was issued to her husband but the notice was not served and it was reported that it could not be served. The Principal Judge, Family Court, Araria proceeded ex-parte. In the meanwhile, the present petitioner, father of the husband of Sundari Devi appeared before the court on 09.09.2015 with a petition that his son is undergoing treatment at Central Institute of Psychiatric, Kanke, Ranchi as an indoor patient as suffering from mental illness but the learned Judge proceeded further in the matter and concluded the proceeding ex-parte directing the husband to pay maintenance of Rs.2,000/- per month to his wife. As the maintenance amount was not being paid so a petition was filed by the present petitioner that his son



is still suffering from mental illness. By order dated 14.07.2016, guardian of the husband was directed to pay the maintenance amount. Aggrieved by these two orders, the petitioner has challenged both the orders in these criminal revision applications.

4. Learned counsel for the petitioner submits that the petitioner appeared after getting knowledge of the proceeding and filed a petition that his son was being treated in Central Institute of Psychiatric, Kanke, Ranchi for mental illness but no order was passed by the learned Principal Judge, Family Court, Araria in view of provisions laid down under Sections 328 to 331 Cr.P.C. rather continued the proceeding and passed the final order of maintenance ex-parte. In view of the said provision it is incumbent on the court to make enquiry and if it is found that the proceeding is going on during the mental illness of the opposite party (husband), further proceeding was required to be postponed till he becomes mentally fit but in the present case such mandatory provision was not followed by the court below. It is further contended that medical report of the treatment going on in Central Institute of Psychiatric, Kanke, Ranchi was filed but the same was not considered and no order for medical enquiry by the medical board was passed in view of Section 328 Cr.P.C. rather continued the proceeding ex-parte and passed final order and medical prescriptions of the son of the petitioner as well as report of Central



Institute of Psychiatric has also been filed.

5. The learned counsel appearing on behalf of opposite party no.2 submits that the provision of Section 328 and 331 do not apply in the present proceeding considering the provisions of the Family Court Act. He next submits that while this Court granted anticipatory bail to the husband directed him to pay maintenance of Rs.500/- per month but the same was also not complied by the petitioner's son.

6. Having considered the rival submissions of both sides and on perusal of the records, it is evident that a petition was filed by the petitioner while a proceeding under Section 125 Cr.P.C. in the court of Principal Judge, Family Court, Araria was going on ex-parte, drawing attention to the court that his son (husband of opposite party no.2) is admitted in Central Institute of Psychiatric, Kanke, Ranchi as suffering from mental illness but no order was passed by the court for production of petitioner's son for medical examination in view of Section 328 Cr.P.C. in order to ascertain whether he suffers from any mental illness. Chapter XXV of the Code of Criminal Procedure contains the procedure to be adopted in case of accused or the person against whom any proceeding is going has reason to believe regarding suffering him of unsoundness of mind and consequently incapable of making his defence. Magistrate will inquire



into the fact of such unsoundness of mind. Such person is required to be examined by the Civil Surgeon of the district or such other Medical Officer or the State Government may direct but such procedure has not been adopted in the present proceeding. Moreover, according to Section 10(1) of the Family Courts Act, 1984 and the Code of Civil Procedure applies in a suit or proceeding except proceeding initiated under Chapter IX of Cr.P.C. In view of Section 10(2) of the Family Courts Act Code of Criminal Procedure applies in a proceeding under Chapter IX of Cr.P.C.

7. It is submitted on behalf of the petitioner that his son is still suffering from mental illness. Further by orders dated 19.12.2015 and 14.07.2016 the court below has directed the father-in-law of the petitioner of the miscellaneous case to pay the maintenance amount that too is against provision of 125 Cr.P.C. Provision is very categorical that a person having sufficient means if neglects or refuses to maintain his wife unable to maintain herself is directed to pay the maintenance after following the procedure laid down under Section 126 Cr.P.C. Further Section 126(2) in the proviso the conditions are fixed for determining the proceeding ex-parte, in this regard the Magistrate is required to be satisfied that the person against whom order for payment of maintenance is proposed to be made is willfully avoiding service or willfully neglect to attend the court then he may



proceed against him ex-parte but in the instant case petition was filed by the petitioner that his son is suffering from mental illness and without taking into consideration and without holding inquiry whether husband is suffering from mental illness, the Principal Judge, Family Court proceed to conclude the proceeding ex-parte, which is contrary to the provision of law so both impugned orders dated 19.12.2015 and 14.07.2016 are set aside and the case is further remanded back to the Principal Judge, Family Court, Araria in order to hold the enquiry in view of Section 328 Cr.P.C. and to proceed further in accordance with law. The petitioner will ensure the production of his son before the Principal Judge, Family Court, Araria on the date fixed for such inquiry, so that the proper inquiry be conducted expeditiously.

8. Both criminal revision applications stand allowed with the aforesaid observations.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.10.2017
Transmission Date	06.10.2017

