

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.1120 of 2016

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1. ARIF KHAN @ MD.ARIF KHAN s/o late Mobin Khan resident of village - Kaler, P.S. Kaler, District - Arwal.

.... Petitioner/s

Versus

1. Safina Khatoon w/o Md. Arif Khan resident of village - Kaler, P.S. Kaler, District - Arwal.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ankit Katriar
Mr. Ravi Kumar

For the Respondent/s :

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

3 06-04-2017 Heard learned Counsel for the petitioner.

By the impugned order, dated 30.05.2016, passed by learned Principal Judge, Family Court, Jehanabad, in Maintenance Case No. 53 of 2015, the Court has allowed monthly maintenance allowance at the rate of Rs. 9,000/- in favour of Opposite Party to be paid by the petitioner, who is her husband.

Learned Counsel for the petitioner has submitted that the Court below did not objectively consider the aspect that there was no justifiable reason for the Opposite Party to keep herself away from the association of the petitioner and refuse to live with him. He, accordingly, submits that the Court below has committed an error by



allowing maintenance allowance without there being any finding on this aspect.

He has, next, submitted that the amount which has been awarded for the purpose of maintenance is excessive considering the earnings of the petitioner and findings recorded by the Court below in this regard is also without any basis.

From the impugned order, I find that the petitioner had not appeared before the Court below to disclose his income and take specific stand in this regard. Learned Counsel for the petitioner has submitted that the petitioner did not have proper information as regards dates fixed by the Court below on which dates he was required to appear, inasmuch as he was not duly informed by learned Counsel.

In my view, the remedy of the petitioner lies in Section 126 of the Code of Criminal Procedure, 1973, proviso to sub Section (2) of Section 126 of the Code of Criminal Procedure, 1973, by making appropriate application in order to satisfy the Court below that the petitioner did not willfully avoid his appearance before the Court.

Considering the facts and circumstances, this application is disposed of with an observation that the



petitioner will be at liberty to take recourse to the proviso to sub Section (2) of Section 126 of the Code of Criminal Procedure, 1973, by making appropriate application.

It is indicated her that if any such application is filed and a point of limitation arises, the Court below shall keep in mind the fact that the petitioner was pursuing his remedy before this Court by filing the present application.

Learned Counsel for the petitioner has informed thatailable distress warrant has been issued for non-payment of the maintenance allowance as awarded by the Court below and some protection may be given by this Court till the petitioner makes an application under Section 126 of the Code of Criminal Procedure, 1973.

It is indicated that till filing of the application, under Section 126 of the Code of Criminal Procedure, 1973, if the same is filed within a period of one month from today, no coercive steps shall be taken against the petitioner.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

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