

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.298 of 2016

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Indrajeet Kumar, Son of Shiv Prasad Paswan, R/o Village Tilakamanjhi, P.S.
Kotwali, District Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Bharti Devi, Wife of Shri Indrajeet Kumar, R/o Railway Colony,
Kotipara, Railway Quarter No. 714-H, P.S. & District Katihar.
3. Jeet Raj, Son of Indrajeet Kumar, under guardian of Smt. Bharti Devi,
residing at Railway Colony Kotipara, Railway Quarter No. 714-H, P.S.
& District Katihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sharda Nand Mishra, Adv.
Mr. Harish Chandra Patel, Adv.
Mr. Dhananjay Kr. Gupta, Adv.

For the State : Mrs. Pushpa Sinha-2 (APP)

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

ORAL JUDGMENT & ORDER

Date : 26-07-2017

The petitioner is aggrieved by an order, dated
28.01.2016, passed by the learned Principal Judge, Family
Court, Katihar, in Maintenance Case No. 1170 of 2014,



whereby, the petitioner has been asked to pay a sum of Rs. 10,000/- per month to opposite party No. 2, who is admittedly his wife, and Rs. 5,000/- per month to his minor son, who is opposite party No. 3. It is the case of the petitioner that the said order has been passed *ex parte* as he did not have any notice about the pendency of the said maintenance case before the Principal Judge.

2. There is specific provision under proviso to sub-Section (2) of Section 126 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as the 'Cr.P.C.'*) that if a person is able to satisfy the Magistrate that he did not willfully avoid service of notice, or willfully neglect to attend the Court, the Magistrate may proceed to hear and determine the case and may set-aside an *ex parte* order for good cause shown on an application made in that regard.

3. Since the petitioner has remedy under the said provision, this application, on the ground taken for assailing the impugned order, cannot be entertained.

4. The petitioner shall be at liberty to make appropriate application before the court below for setting-aside the order. It is indicated that the law of limitation applies on an application under proviso to sub-Section (2) of Section 126



Cr.P.C. and if any question of delay arises, the Court below shall take into account the fact that the petitioner was pursuing his remedy before this Court by way of present criminal revision application, while considering any application for condonation of delay.

5. This application is, accordingly, disposed of.

(Chakradhari Sharan Singh, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27.07.2017
Transmission Date	27.07.2017

