

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.240 of 2015

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1. Rakesh Kumar S/o Ramakant Ojha Resident of Phulwaria, Police Station Manjhagarh, District Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Akansha Priya D/o Krishnamurari Mishra, W/o Rakesh Kumar Resident at Mohalla Chandmari Ekawna, Police Station Motihari (Town), District East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Pd. Singh Sr. Adv.
With Mr. Dwivedy Surendra

For the Respondent/s : Mr. Parmeshwar Mehta, (App)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

5 27-07-2017 Heard learned counsel for the parties.

2. The petitioner is aggrieved by an order, dated 14.07.2014, passed by learned Principal Judge, Family Court, East Champaran, Motihari in Maintenance Case No. 17 of 2013/0664 of 2014, whereby an application filed on behalf of the Opposite party No.2 under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) has been allowed and the petitioner has been directed to pay monthly maintenance allowance at the rate of Rs. 20,000/- per month since the date of filing of her petition.

3. Learned Senior counsel appearing on behalf of the petitioner has submitted that the petitioner resides in Canada and



he did not have any notice or filing of the pendency of the said maintenance case before the Court of learned Principal Judge, Family Court, East Champaran at Motihari. He has submitted that ex parte order of maintenance has been passed without any notice to the petitioner and, therefore, it deserves to be set aside.

4. The petitioner seeks to challenge the impugned order mainly on the ground that he did not have any notice of filing petition of for the maintenance case and he could have taken such plea as would have been available to him before the Court below, to oppose he said petitioner. However, there being specific remedy provided under Section 126(1) of the Code, I am not inclined to interfere with the impugned order.

5. Section 126 of the Code provides for the procedure for exercise of power under Section 125 of the Code, which reads thus:-

“126. Procedure.

[\(1\)](#) Proceedings under section 125 may be taken against any person in any district-

[\(a\)](#) where he is, or

[\(b\)](#) where he or his wife, resides, or

[\(c\)](#) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

[\(2\)](#) All evidence in such proceedings shall be taken in the presence of the person against



whom an order for payment of maintenance is proceed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons- cases:

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.

[\(3\)](#) The Court in dealing with applications under section 125 shall have power to make such order as to costs as may be just”.

6. It can be easily noticed from proviso to Sub-section (2) of Section 126 of the Code that Magistrate exercising power under Section 125 of the Code may be set aside an order passed *ex parte* for good cause shown on an application made before within three months from the date thereof, subject to the conditions as the Court may deem fit and proper.

7. In the above background since the petitioner has



remedy under Section 126 of the Code, I am not inclined to entertain this application.

8. This application is, accordingly, dismissed with a liberty to the petitioner to approach the Court, invoking to proviso to Sub-section (2) of Section 126 of the Code.

9. It is made clear that Section 5 of the Limitation Act applies to a proceeding under Section 126 of the Code and if any question of limitation arises before the Court below, the Court below shall take into account, inter alia, the fact that the petitioner was pursuing her remedy before this Court by filing present criminal revision application.

10. The interim order granted by this Court by order, dated 13.08.2015 shall merge with the present order.

(Chakradhari Sharan Singh, J)

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