

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Writ Jurisdiction Case No.3 of 2017**

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

- =====
1. Lakhan Paswan @ Lakhu Paswan, S/o Late Shyam Paswan, Resident of Village- Sheikhpura, Near Cold Storage Sherghati, P.S.- Sherghati, Distt- Gaya, At present Driver of S.D.O. Court, Sherghati, P.S.- Sherghati, District- Gaya.

.... .... Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Law Department, Govt. of Bihar, Patna.
2. Paro Devi, W/o Lakhan Paswan @ Lakhu Paswan, Resident of Village- Sheikhpura, Near Cold Storage Sherghati and D/o Sharan Paswan, Resident of Village- Sheikhpura, P.S.- Sherghati, District- Gaya, presently W/o Late Sudheshwar Paswan Paswan, Resident of Village- Sheikhpura, Ward No.13, P.S.- Sherghati, District- Gaya.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Devendra Prasad Singh, Advocate

For the Respondent/s : Md. Raisul Haque, SC-10

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR**

**ORAL JUDGMENT**

**Date: 09-03-2017**

Heard learned counsel for the petitioner and learned counsel for the State-respondents.

2. Petitioner has invoked criminal writ jurisdiction of this Court for quashing the order dated 22.08.2016 passed, in Misc. Case No.102 of 2006 vide Annexure-10, by the Family Court, Gaya.

3. The petitioner was opposite party before the learned Family Court. The petitioner had filed a petition on 05.04.2016 for modification of the maintenance order passed under Section 125 Cr.P.C. on the ground that the daughter became major and she has



already married. The maintenance was awarded by final order passed under Section 125 of the Cr.P.C. and the modification was sought for under Section 127 of the Cr.P.C. The prayer has been refused.

4. Sub-section (4) of Section 19 of the Family Courts Act 1984 provides for remedy even at the instance of the petitioner against the impugned order passed in Chapter-IX of the Code of Criminal Procedure, 1973. Section 19 of the Family Courts Act 1984 is reproduced hereunder:

*“19. **Appeal.**- (1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.*

*(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties [or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):*

*Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991.]*

*(3) Every appeal under this section shall be preferred within a period of thirty days from the*



*date of the judgment or order of a Family Court.*

*(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.*

*(5) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, order or decree of a Family Court.*

*(6) An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges.”*

5. A bare perusal of Sub-section (4) aforesaid makes it abundantly clear that unless the order is an interlocutory order, this Court has jurisdiction to look into the correctness, legality or propriety of the order passed under Chapter IX of the Code of Criminal Procedure (in the present case the order has been passed under Chapter IX).

A bare perusal of the entire writ application reveals that the order of maintenance was passed under Section 125 Cr.P.C., which was a final order. The petitioner had prayed for modification of the aforesaid final order, as discussed above, which had been refused



by the impugned order, therefore, the impugned order cannot be said to be an interlocutory order. Therefore, in my view, the petitioner has got efficacious remedy under the Family Courts Act itself.

6. 5Accordingly, this writ application stands dismissed as not maintainable in view of other efficacious remedy to the petitioner.

Mkr./-

(Birendra Kumar, J)

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