

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.7588 of 2017

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

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Md. Waziur Rahaman @ Lal Babu S/o- Md. Younush, Resident of Village-
Milkichak, Bharopatti, Post- Milkichak, P.S.- Bahadurpur, District- Darbhanga,
Bihar.

.... Petitioner

Versus

1. The State of Bihar.
2. Kahakasha Parveen, Wife of Md. Waziur Rahman @ Lal Babu, D/o- Md. Hafiz,
Resident of Village- Milkichak, Bharopatti, Post- Milkichak, P.S.- Bahadurpur,
District- Darbhanga, Bihar at Present Mohalla- Bahadurpur, Hasanpur, P.S.-
Muffasil, District- Samastipur, Bihar.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Kumar Kaushlendra, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

For the Opposite party No.2: Mr. Raja Ram Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 06-03-2018

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for setting aside ex parte order dated 30.11.2016 passed by the learned Principal Judge, Family Court, Samastipur in Maintenance Case No.9 of 2016 in a proceeding under Section 125 of the Code of Criminal Procedure (for short 'Cr. P.C.') by which the petitioner has been directed to make payment of monthly allowance to opposite party no.2 by 10th of each succeeding month at the rate of Rs.5000/- per month and Rs.1,000/- to minor son from the date of order, i.e., 30.11.2016.

2. The only ground for challenge of the impugned



order is that the order was passed behind the back of the petitioner. Learned counsel for the petitioner submitted that no notice was ever served to the petitioner. Thus, he had no opportunity to defend himself and show that he does not have the capacity to pay the maintenance allowance.

3. On the other hand, learned counsel appearing for the opposite party no.2 submitted that the submission made by the learned counsel for the petitioner is patently wrong. He submitted that the court below while passing the impugned order has clearly held in para 7 that in spite of service of processes, the opposite party did not appear and, consequently, vide order dated 01.09.2016, the case proceeded against him ex parte.

4. I have heard learned counsel for the parties and perused the record.

5. At the outset, I must record that the petitioner has not denied marriage with the opposite party no.2. The family court while passing the impugned order has categorically observed that processes were served upon the petitioner, but he failed to appear. There is no reason for me to doubt the observation made by the court in judicial proceeding specially when the petitioner has not brought on record the entire order-sheet of the court below to show that notice was not served upon him.



6. The court below after recording evidence on behalf of the opposite party no.2 has given clear finding that the opposite party no.2 being legally wedded wife was deserted by the petitioner and is unable to maintain herself and her minor son whereas the petitioner having sufficient means to maintain his wife and minor son has deserted them. After recording satisfaction regarding the means of the petitioner, the court below has awarded monthly maintenance allowance to the opposite party no.2, which, according to me, is neither unjust nor improper. Learned counsel for the petitioner has not even brought on record the entire order-sheet of the court below in order to establish his claim that he had not been afforded an opportunity of hearing. On enquiry, he submitted that the petitioner has not paid any amount till date to the opposite party no.2 pursuant to the order dated 30.11.2016 passed by the Family Court.

7. In view of the discussions made above, I see no merit in this application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.03.2018
Transmission Date	10.03.2018

