

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.20217 of 2015

Arising Out of PS. Case No.- Year- Thana- District- Sheikhpura

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Santu Kumar @ Santosh Kumar @ Sintu Kumar @ Santosh Singh @ Sintu Singh Son of Jogi Singh Resident of village - Jawas, P.S. Barahiya, District - Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Nisha Devi wife of Sintu Kumar @ Santosh Singh Resident of village - Jawas, P.S. Barahiya, District - Lakhisarai at present address D/o Bilayti Singh, Resident of village - Bhados, P.S. - Sheikhpura, District - Sheikhpura.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Jai Prakash Singh
For the O.P. no. 2	:	Mr. Sanjeev Kumar
For the State	:	Mr. Shantanu Kumar (APP)

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 26-10-2018

Both parties along with their respective counsels turned up before the Court.

Despite making efforts by this Court to get the matter settled between the parties, there appears to be no ray of hope of any settlement between them.

On the submission of both the parties to hear this petition on merit, heard learned counsel for the petitioner, learned counsel for the O.P. no. 2 as well as learned counsel for the State.



This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 25.11.2013 passed by learned Sub-Divisional Judicial Magistrate, Sheikhpura in Maintenance Case No. 3M/2009 whereby the learned Magistrate directed to issue distress warrant against the petitioner.

From perusal of record, it appears that vide order dated 04.02.2013, the petitioner was directed to pay maintenance Rs. 1500/- to his wife and 700/- each to his two daughters, but as the petitioner did not pay the aforesaid maintenance to the O.P. no. 2 and her daughters, the learned Magistrate ordered to issue distress warrant against the petitioner vide impugned order dated 25.11.2013.

As per proviso to Section 125 sub-Section (3) of Cr.P.C., no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due. But from perusal of record, it appears that the aforesaid order to issue distress warrant has been passed by the court *suo motu* without filing any application by the O.P. no. 2. Hence, the aforesaid order passed by the learned Magistrate appears to be illegal and bad in law, and



accordingly, it is quashed and this petition is allowed.

However, learned court below is directed to dispose of the case as expeditiously as possible preferably within six months from the date of receipt/production of a copy of this order.

(Prakash Chandra Jaiswal, J)

rohit/-

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

