

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.167 of 2016

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Madan Mohan Giri, Son of Late Baidyanath Giri, Resident of Village- Sonbal Uttarpatti, P.S.- Paharpur, District- East Champaran. At present Assistant Sub Inspector East Railway, P.S.- Railway Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Chanda Devi wife of Madan Mohan Giri
3. Nibha Kumari D/o Madan Mohan Giri Resident of Village Ayachi Gram Road No.1, Bairiya, P.S.- Ahiyapur, District- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Bimlesh Kumar Pandey
For the Respondent/s : Mr.Satyendra Narayan Singhapp

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date : 15-04-2019

Heard the parties.

This revision application has been filed against the order dated 09.04.2015 passed by Principal Judge, Family Court, Muzaffarpur in Maintenance case No.24 of 2013 whereby and whereunder he has allowed the maintenance case filed by the opposite party no.2 and 3 along with brother of opposite party no.3 for maintenance and directed to pay Rs.6000/- per month to opposite party No.2 and Rs.4500/- per month to the opposite party No.3 as maintenance and also against the order dated 10.12.2015 passed in Misc. Case No.27 of 2015 by the petitioner for setting aside the ex.-parte order of maintenance in which the petitioner was directed to pay at least 25 per cent of dues amount within 12 days.



Submission of learned counsel for the petitioner is that an impugned order has been passed against the petitioner without valid service of notice and without the gazette notification or substituted service and petitioner has no objection in paying the maintenance amount to opposite party no.2 but opposite party no.3 has already attained majority and as such she is not entitled for maintenance under Section 125 of the Criminal Procedure Code. It has also been submitted by learned counsel for the petitioner that order dated 10.12.2015 passed in Misc. Case No.27 of 2015 is also without proper application of mind. Further submission is that the the Misc. case filed by the petitioner also in which petitioner was directed to pay at least 25 per cent of the total amount. Petitioner is ready to pay some lump sum amount for the present and is ready to pay maintenance amount to the opposite party no.2 regularly on the condition that it will be subject to the result of the case.

In this case, notice was issued to the opposite party no.2 and 3, it appears that on behalf of opposite party no.2, her daughter has received notice but none of them have appeared in this case.

In view of the above facts and circumstances of the case and considering the fact that without any proper service, ex.-parte order has been passed and also considering the conditional order in the Misc. Case without proper opportunity granted to the



petitioner, both the order dated 08.04.2015 passed in Maintenance Case No.24 of 2013 and order dated 10.12.2015 passed in Misc. Case No.27 of 2015 suffers from illegality and improprieties.

Accordingly, the impugned order dated 08.04.2015 passed in M.C. No.24 of 2013 and order dated 10.12.2015 passed in Misc. Case No.27 of 2015 are set aside and the matter is remitted back to the learned Family Judge for considering it afresh after giving opportunity to both the parties to adduce their evidence, if they so desire and dispose of the Maintenance case, if possible, within a period of nine months on condition that petitioner will deposit Rs. One lakh in favour of the opposite party no.2 by a bank draft within a period of one month which she can withdraw and petitioner will continue to pay Rs.6,000/- per month to the opposite party no.2 which will be subject to the result of case. Both the parties will abide by the aforesaid condition.

Accordingly, this application is disposed of with the aforesaid direction.

(Vinod Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24/04/2019
Transmission Date	24/04/2019

