

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.414 of 2016

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

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Niraj Kumar @ Sonu, Son of Sri Rajan Prasad Singh, resident of Kalyan Bigha, PS Harnaut, District Nalanda.

... .. Petitioner

Versus

1. Smt. Namita Sinha, W/o Niraj Kumar@Sonu, D/o Girija Nandan Singh resident of Mohalla- Ashok Nagar Road no. 11 P.O. Lohia Nagar, PS Kankarbagh, Distt Patna.
2. The State of Bihar.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Abhay Kumar Singh, Advocate
For the O.P. No.1	:	Mr.Rakesh Ranjan, Advocate
For the State	:	Mr. Parmeshwar Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

6 05-07-2019 This revision application has been filed against the order dated 9.3.2016 passed by Additional Principal Judge, Family Court, Patna in Maintenance Case No. 208(M) of 2012 filed by opposite party No.1-wife by which the petitioner-husband was directed to pay Rs.15,000/- per month as maintenance to opposite party No.1.

Case, in short, is that opposite party No.1 was married with petitioner and they were residing peacefully and petitioner was working as Marine Engineer in an American based ship on contract basis. It further appears that thereafter some dispute arose between them and petitioner filed Matrimonial Case No. 351 of 2010 under Section 12 of the Hindu Marriage Act and



opposite party No.1 has also filed a case under Section 498A IPC and Sections 3/4 of Dowry Prohibition Act, which has been registered as Agamkuan P.S.Case No. 149 of 2010. It further appears on the record that later on the present maintenance case has been filed by opposite party No.1-wife before the Principal Judge, Family Court, Patna. Notice was issued in that case to the petitioner and on non-appearance of petitioner the case was fixed for ex parte hearing and proceeded it. It appears that three witnesses have been examined on behalf of opposite party No.1 and thereafter learned Principal Judge has allowed the maintenance case allowing maintenance of Rs.15,000/- per to opposite party No.1.

Being aggrieved by the same, the present revision application has been filed.

The ground for assailing the order impugned is that without proper service of notice the maintenance case has been fixed for ex parte hearing against the petitioner, as such he has not been given an opportunity of hearing. Second ground is that the evidence of opposite party No.1 itself shows that she was in job but without considering the same an amount of Rs.15,000/- has been fixed as maintenance against the petitioner. Elaborating his argument learned counsel for the petitioner has



submitted that he has filed order sheet of the court below and in this connection he has drawn my attention towards Annexure-6 which clearly shows that on 29.8.2012 an application under Section 125 Cr.P.C. has been filed for maintenance, on 17.11.2012 direction was made for issuance of notice, on 8.1.2013 the notice was returned unserved and further the order sheet dated 17.3.2015 shows that no pairvi was made on behalf of applicant-wife and the case was fixed for service of notice and notice through courier was sent to the petitioner and only on the basis of receipt of notice attached in the record but without showing service report, service of notice was found to be validly served and the case was fixed for ex party hearing against the petitioner. On that basis it has been submitted that this is not the compliance of valid service of notice on the petitioner and without considering the same, the case has been fixed for ex parte hearing. Further submission is that without hearing the petitioner or giving a chance to the petitioner to adduce evidence, the maintenance case has been allowed awarding maintenance to opposite party No.1.

On the other hand, learned counsel for opposite party No.1 has submitted that in this case the notice was sent through courier and after waiting for several dates the service of notice



was treated to be valid service, thereafter spite of sufficient opportunity was being given he had not appeared. Learned Family Court considering the entire materials on the record has passed the impugned order and there is no illegality and impropriety in the impugned order. Hence the same does not require any interference by this Court.

Considering the submission of both the parties and on perusal of the record it clearly appears that the learned court without having valid service of notice on the petitioner, has fixed the ex parte hearing of the maintenance case filed by opposite party No.1 and further it appears that the court below has not considered that opposite party No.1 was in job as per evidence itself and fixed the maintenance case against the petitioner.

So far factum of marriage is concerned and opposite party No.1 is residing separately, that has not been challenged.

Considering the entire discussions made above, the matter is remitted back to the Family Court, Patna for considering it afresh after giving opportunity to the parties to adduce evidence and the parties are directed to co-operate in disposal of the maintenance case, which shall be decided within a period of seven months from the receipt of this order.



It is made clear that petitioner has to comply with the order dated 27.3.2018 passed by this Court, which was later on modified by order dated 15.5.2019 passed during pendency of this application and on failure to comply with the said order the petitioner will be debarred from participating in the maintenance case proceeding.

This application is, accordingly, allowed to the extent indicated above.

Let this order be communicated to the court concerned fixing a date by this Court itself on 26.7.2019, on which date both the parties have to appear before the Family Court, Patna.

(Vinod Kumar Sinha, J)

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