

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.632 of 2016

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

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Shambhu Mahto S/o Sita Ram Mahto Resident of Village- Sakraili, PS
Chairaiyawariyarpur, District Begusarai.

... .. Petitioner/s

Versus

Babita Devi D/o Baleshwar Mahto Resident of Village- Rupashpur, PS
Rautara District Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Binod Kumar
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date : 17-01-2019

I.A.No.2205 of 2016 is allowed and the limitation is
condoned.

2. This revision application has been preferred by the
petitioner-husband against the order dated 19.11.2014 passed in
Maintenance Case No.132 of 2012 whereby the Additional
Principal Judge, Family Court, Katihar has directed the petitioner
to pay Rs.1,500/- to the Opposite party for maintenance.

3. The case in short is that the Opposite party has filed a
petition for maintenance before the Additional Principal Judge,
Family Court, Katihar stating that the marriage was solemnized
with the petitioner on 23.5.2008 in a temple and she went to her
matrimonial house and she lived there for three years peacefully
but thereafter petitioner assaulted her due to non-fulfillment of



demand of Rs.50,000/- and ousted her from the house and she has no source of income and not able to maintain herself. Further case of the opposite party is that the petitioner is working as Mason and he is earning Rs.12,000/- per month.

4. It appears that in spite of notice the petitioner did not appear before the learned Family Court as such the maintenance case proceeded *ex parte*, wherein four witnesses have been examined and after considering the evidence available on the record, the learned Family Court has come to the conclusion that she is wife of the petitioner and unable to maintain herself and she has been deserted by the petitioner and further found that the petitioner has sufficient income to maintain the Opposite Party and considering the same ordered for grant of Rs.1,500/- as maintenance to the Opposite Party.

5. This revision application has been preferred on the ground that the opposite party is not wife of the petitioner as no marriage was solemnized and further the petitioner has not received any notice and in spite of no valid service of notice, the case has been fixed for ex party.

6. It appears that the in this case the notice was issued to the Opposite Party and Opposite Party has appeared through



Vakalatnama also, however, nobody appeared on behalf of the opposite party.

7. On the basis of the above averments, the learned counsel for the petitioner has submitted that without proper service report, the case was fixed for *ex parte* as a matter of fact the Opposite Party is not wife of the petitioner and as such he is not liable to maintain her.

8. Heard learned A.P.P.

9. Having heard both sides and on perusal of the record it appears that the learned Family Court considering the evidence available on the record has come to the finding that the Opposite Party is wife of the petitioner and considering the same he has passed order directing the petitioner to pay Rs.1,500/- per month to the Opposite Party.

10. Considering the aforesaid facts and circumstances, as discussed above, I am not inclined to interfere with the impugned order as there is nothing available before this Court to pass any order with respect to case of the petitioner that she is not wife, however, as order was *ex parte*, he may move before the learned family court to raise all the objections and if any such application is filed before the learned Family Court he will issue notice to the opposite party and both the parties are at liberty to adduce



evidence in their favour and considering the same he will pass appropriate order if possible within a period of six months.

11. In the meantime, the petitioner is directed to continue to deposit the maintenance amount before the learned Family court and also arrears of the maintenance amount before the learned Family court, and same shall be released in favour of the Opposite party , which will be subject to result of the case.

12. With the above observation, this application is disposed of.

(Vinod Kumar Sinha, J)

chn/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.01.2019
Transmission Date	22.01.2019

