

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.28 of 2018

In
Miscellaneous Appeal No.670 of 2016

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

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Ram Naresh Rai, Son of Satya Narayan Rai, Resident of Village- Chaupar
Kala, P.S.- Nanpur, District- Sitamarhi.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Geeta Devi, Wife of Ram Naresh Rai, Daughter of Ram Nath Rai.
Presently residing at Village- Bahurar, P.S.- Nanpur, District- Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar
For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

7 20-06-2019 Heard learned counsel for the petitioner. Notice

has already been served on opposite party No.2, who is wife of

the petitioner, but no one appears.

2. This criminal revision has been preferred, under

Section 19 (4) of the Family Court Act, against the order dated

19.05.2015, passed by the learned Principal Judge, Family

Court, Sitamarhi in Miscellaneous Case No.34 of 2013/384 of

2014, whereby the learned court below has ordered the

petitioner to pay Rs.3000/- (Rupees Three Thousand) per month

to his wife as maintenance.

3. The petitioner has challenged the impugned

order on the ground that the same was an ex parte order and the



petitioner could not get liberty to rebut the claim of opposite party No.2 before the Family Judge. Moreover, there was no substantial material regarding income of the petitioner before the Family Court. Hence, the amount of maintenance decided by the Family Court suffers from arbitrariness.

His further contention is that he is ready for restoration of conjugal life with opposite party No.2, who herself refused the company of the petitioner. Hence, she is not entitled for maintenance.

4. The impugned order would reveal that in spite of service of notice on the petitioner, who was opposite party No.2 before the court below, the petitioner avoided appearance. Thereafter, notice was published in the daily newspaper circulating in the area, where the petitioner ordinarily reside and thereafter, the matter was heard ex parte by the court below.

Sub-Rule 2 of Rule 20 under Order V of the Code of Civil Procedure provides that “*effect of the substituted service of notice shall be the same as the notice was personally served on the defendant*”. Therefore, the law presumes that after paper publication of notice, the petitioner had knowledge of the proceeding.

5. The impugned order further reveals that the court



considered the material on the record that opposite party No.2 was being tortured by the petitioner and for that a case under Section 498A of the Indian Penal Code was also lodged, vide G.R. Case No.390 of 2012. Thus, opposite party No.2 had reasonable justification to be away with the company of the petitioner.

6. Even, if it is assumed that petitioner could not be allowed opportunity to controvert the claim of opposite party No.2, regarding the income of the petitioner, the amount of maintenance is so meager that it cannot provide two times meal to an individual per day. Therefore, I do not find any reason to interfere with the impugned order. Accordingly, this criminal revision is *dismissed* as devoid of any merit.

(Birendra Kumar, J)

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