

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No. 928 of 2018**

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

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Seema Kumari @ Seema Devi, wife of Manoranjan Singh and Daughter of Javahar Singh, resident of Village- Barahiya, Ward No. 15, P.S. Barahiya, District- Lakhisarai, at present resident of Village- Madhurapur, Ward No. 20, Bichla Tola, Nav Khuti, P.S. Teghra, District- Begusarai.

... .. Petitioner/s

Versus

Manoranjan Singh, Son of Balmiki Singh, resident of Village- Barahiya, Ward No. 15, P.S. Barahiya, District- Lakhisarai.

... .. Opposite Party/s

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**Appearance :**

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| For the Petitioner/s     | : | Mr. Nawal Kishore Singh,<br>Mr. Jitendra Nath Tiwary and<br>Mr. Sanjeeb Kumar Sanju, Advocates |
| For the Opposite Party/s | : | Mr. Om Prakash Maharaj, Advocate                                                               |
| For the State            | : | Mr. Jharkhandi Upadhyay, APP                                                                   |

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN**  
**AMANULLAH**

**ORAL JUDGMENT**

**Date : 24-10-2019**

Heard learned counsel for the petitioner and learned counsel for the opposite party.

2. The petitioner has moved the Court under Section 19(4) of the Family Courts Act, 1984 against the order dated 28.06.2018, passed by the Principal Judge, Family Court, Begusarai by which Miscellaneous Case No. 9 of 2017, has been dismissed.

3. The petitioner, who is the wife of the opposite party had filed Maintenance Case No. 110M of 2010 on 15.09.2010 under Section 125 of the Code of Criminal Procedure, 1973



(hereinafter referred to as the 'Code') in which, after hearing the parties, the Principal Judge, Family Court, Begusarai passed an order on 12.08.2015, directing the opposite party to pay Rs. 2,500/- per month interim maintenance to the petitioner from the date of filing of the petition. The opposite party not paying the amount led to the petitioner filing a petition before the Court below on 28.09.2015, praying for implementation of such order. Against the said interim order, the opposite party moved this Court in Criminal Revision No. 972 of 2015 in which on 08.02.2016, while issuing notice to the petitioner, the Court had made it clear that it had not stayed the proceedings and therefore, the Principal Judge, Family Court, Begusarai shall take stringent steps for ensuring compliance of the order in the maintenance case. The petitioner did not comply with the said order and the Court below also did not take any steps due to which, the petitioner again filed an application on 05.11.2016, praying for payment of the amount by the opposite party. Thereafter, the petitioner filed Miscellaneous Case No. 9 of 2017 on 28.08.2017 under Section 128 of the Code praying for payment in terms of order dated 12.08.2015. The Court below has rejected the Miscellaneous Case No. 9 of 2017, by the impugned order dated 28.06.2018, on the ground that the application had to be filed



within one year from the date of the order as per the stipulation of Section 125(3) of the Code.

4. Learned counsel for the petitioner submitted that the order rejecting the plea of the petitioner is totally misconceived. It was submitted that the first application filed for implementation of the order dated 12.08.2015 was on 28.09.2015, i.e., within one and a half months of the order. It was submitted that no order was passed on the said application and despite this Court in Criminal Revision No. 972 of 2015, by order dated 08.02.2016, directing the Court below to take stringent steps for ensuring compliance of the order, nothing was done due to which she again filed a petition on 05.11.2016. It was submitted that still when nothing was done, the petitioner filed a substantive Miscellaneous Case No. 9 of 2017 on 28.08.2017. It was submitted that even if Miscellaneous Case No. 9 of 2017 for the time being, is kept aside, the first petition filed by the petitioner on 28.09.2015 before the Court below, was sufficient to take steps for ensuring payment to the petitioner of the interim maintenance awarded to her. It was submitted that the High Court also directing for stringent steps for implementation of the order and the same also not being complied with, led the petitioner to file another application on 05.11.2016, on which also no action was taken. Learned counsel relying upon



a decision of the Hon'ble Supreme Court in **Shantha v. B. G. Shivananjappa** reported as **AIR 2005 SC 2410**, submitted that application on non-failure to pay maintenance filed within stipulated period of one year, subsequent application filed in the same proceeding claiming arrears for later period is not a fresh application and, thus, would not be barred by limitation.

5. Learned counsel for the opposite party submitted that the main case itself has been finally disposed off by order dated 18.07.2017 and, thus, any interim order would automatically vanish. He tried to go into the merits of the matter while submitting that the petitioner was to blame for not living with the opposite party. On a query of the Court as to how the same was relevant and when all things were considered by the Court below on 12.08.2015, the order for interim maintenance was passed in the presence of the parties, learned counsel could not give any reply. Further, the Court would note that all issues which learned counsel for the opposite party tried to canvass before the Court related to orders passed by the Court below in Maintenance Case No. 110M of 2010, which was prior to passing of the order for interim maintenance dated 12.08.2015.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court



finds that there is patent error in the order impugned which requires interference. Mere filing of a formal application under any specific section of any Statute would not automatically render the said application not maintainable if a wrong provision of law has been quoted. In the present case, the order passed under Section 125 of the Code, granting interim maintenance to the petitioner was made on 12.08.2015. The petitioner not being paid the amount by the opposite party had filed an application before the Court below on 28.09.2015, which obviously was an application under Section 125(3) of the Code. The same was also well within time. On the one hand, no order was passed on the said petition filed by the petitioner by the Court below and on the other hand, challenge to the main order dated 12.08.2015, by the opposite party before this Court in Criminal Revision No. 972 of 2015, not being allowed and further by order dated 08.02.2016, the Court below being directed to take stringent steps for ensuring compliance of its order and still the Court below not complying with the order itself requires taking judicial note of.

7. Coming to the main issue, even if subsequently the petitioner may have filed Miscellaneous Case No. 9 of 2017, under Section 128 of the Code, the same cannot be said to be fatal to the grievance/cause of the petitioner, that she is required to be



paid whatever amount is due to her at the rate of Rs. 2,500/- per month from 15.09.2010 till 17.07.2017. Thus, in the considered opinion of the Court, such order was required to be passed on the application filed by the petitioner on 28.09.2015, followed by another application on 05.11.2016, which not having been done and the Court only taking note of Miscellaneous Case No. 9 of 2017 and rejecting the same on the ground of limitation has resulted in failure of justice. The Court has also gone through the order impugned and the lower Court records. The judgment of the Hon'ble Supreme Court in **Shantha** (supra) also supports the case of the petitioner.

8. For the reasons aforesaid, the application is allowed. The impugned order dated 28.06.2018, passed in Miscellaneous Case No. 9 of 2017, is set aside. The Court below is directed to take all necessary steps, in accordance with law, to ensure that the amount of interim maintenance, in terms of order dated 12.08.2015 in Maintenance Case No. 110M of 2010 is paid to be petitioner for the period 15.09.2010 to 17.07.2017. Keeping in view of the fact that more than four years have elapsed since the order was passed and still the same has not been complied with, the Court below shall ensure that the matter is taken to its logical conclusion expeditiously.



9. The Lower Court Records be returned forthwith.

10. Before parting, the Court is constrained to take judicial notice of the observation made by the Principal Judge, Family Court, Begusarai in his order dated 28.06.2018, passed in Miscellaneous Case No. 9 of 2017, in which he has stated that the order passed by the High Court in Criminal Revision No. 972 of 2015 dated 17.10.2016, does not appear to be in accordance with law.

11. The order passed by the Court dated 17.10.2016 in Criminal Revision No. 972 of 2015, reads as under:

*“In view of Full Bench judgment of this Court in **Neelam Kumari Sinha vs. Shree Prashant Kumar** since reported in 2010(3) PLJR 632, the instant revision application filed under Section 19(4) of the Family Courts Act against the interim order of maintenance passed by the Principal Judge, Family Court, Begusarai in a proceeding under Section 125 of the Criminal Procedure Code is not maintainable.*

*Accordingly, the application is dismissed as not maintainable.”*

12. Having regard to the aforesaid, notice be issued to the Judicial Officer who had passed the aforesaid order, to submit an explanation as to how such comment has been made by him with regard to the order passed by the High Court.

13. Registry shall find out the person who has passed the aforesaid order and issue notice to him at the place where he



may be posted, if he is still in service or at his address if he has since superannuated, asking him to submit such explanation within four weeks.

14. Such notice be issued by the Registry latest by tomorrow.

15. The matter be listed on 3<sup>rd</sup> December, 2019, under the heading 'For Orders', when the Court shall consider the explanation of the officer concerned.

**(Ahsanuddin Amanullah, J.)**

P. Kumar

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