

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.184 of 2016

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

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Md. Aslam son of Md. Jamal, resident of Mohalla- Sarai Kilaghat, Rayen Tola, P.S.- Tatanpur, District- Bhagalpur

... .. Petitioner/s

Versus

1. Bibi Sakina Khatoon Wife of Md. Aslam, Daughter of Md. Sharif
2. Md. Sahil Raza, son of Md. Aslam, represented through his mother guardian and next friend Sakina Khatoon, wife of Md Aslam.
Both resident of village- Rajbari Shajangi, P.S.- Habibpur, District- Bhagalpur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vikram Singh
For the O.P.No.2	:	Mr. Najimul Hoda

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

6 25-04-2019 Heard learned counsel for the parties.

This revision application has been filed for setting aside order dated 14.12.2015 passed in Misc. (Maintenance) Case no.108 of 2009 under Section 125 of the Cr.P.C. whereunder the objection of the maintainability of maintenance case on the ground that it is the second case filed by Opposite Parties, has been rejected without considering the materials.

The case of the petitioners in short is that earlier the Matrimonial Case No.68 of 2007 was filed before the learned Family Court, in which both the parties have led their evidence and after hearing the parties, the learned Family Court vide order dated 27.5.2008 dismissed the Matrimonial Case, which



will appear from Annexure-3 and further submission is that in the complaint case filed by the O.P.No.2, the petitioner was acquitted, vide judgment dated 30.3.2015 passed in Complaint Case No.866 of 2007. Further case of the petitioner is that O.P.no.1 filed Maintenance Case No.51 of 2007 and the same was also dismissed. Later on O.P.no.2 preferred Criminal Misc. No.2351 of 2007 before the Hon'ble High Court, which was permitted to be withdrawn and now again O.P.nos.1 and 2 have filed maintenance case on 18.12.2015, which was numbered as Misc. Case No.108 of 2015 on similar facts except the grounds of solemnization of the second marriage and the petitioner has objected the maintainability of the same but the learned Family Court without considering the above matters passed the impugned order which is against the materials available on the record.

Submission of the learned O.P.nos. 1 and 2 is that this application is not maintainable as no final order has been passed, which will appear from the impugned order passed by the learned Family Court in Misc. Case no.108 of 2009 as the last portion clearly shows that the learned Family Court has only rejected the application with observation that point of jurisdiction and maintainability would be decided at the time of



final hearing of the case on merit.

Heard learned APP.

Having heard both sides and in view of the facts and circumstances as stated above, when the petitioner has specifically raised the points of maintainability on the ground that on the same fact earlier the maintenance case filed by O.P.nos. 1 and 2 was dismissed by the learned Family Court, the present maintenance case i.e. Misc. Case no.108 of 2009 is not maintainable.

Considering the above facts, without going into the merit of the case and without observation anything on the claim of the maintainability of the petitioner, this application is disposed of with direction to the learned Principal Judge, Family Court to decide the preliminary objection on the point of maintainability first before proceeding further in this case.

With this above observation, this revision application is disposed of

(Vinod Kumar Sinha, J)

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