

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.294 of 2016

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

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Upendra Kumar Yadav Son of Shree Ram Yadav Resident of Village Bahelia,
P.S. Guthani, District Siwan.

... .. Petitioner

Versus

1. State Of Bihar
2. Smt. Mansha Devi @ Manisha Devi Daughter of Late Vishwanath Chaudhary Resident of Village Kashihari, P.S. Darauli, District Siwan.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Ramchandra Sahni
For the Respondent/s : Mr.Parmanand Prasad App

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

4 29-04-2019 This revision application is directed against the order dated 25.01.2016 passed in connection with Miscellaneous Case No. 173/2010 under Section 125 Cr.P.C. by the Principal Judge, Family Court, Siwan, by which, he has directed the petitioner to pay Rs. 8,000/- per month to opposite party no. 2 and Rs. 5,000/- per month to her minor daughter.

Learned counsel for the petitioner has confined his argument only on the point that ex parte order has been passed by the Principal Judge, Family Court, Siwan and no opportunity of hearing has been given to the petitioner to adduce his evidence. It has been submitted by learned counsel for the petitioner that the amount of maintenance so fixed by the Principal Judge, Family Court, Siwan is also excessive one.



On the other hand, learned counsel appearing on behalf of opposite party no. 2 has filed counter affidavit and submitted that notice was issued to the petitioner and the service report of notice disclosed that he refused to receive the notice and, thereafter, the ex parte order was passed by the Principal Judge, Family Court, Siwan and the plea of the petitioner that he has not been given opportunity to place his case cannot be acceded to. It has also been submitted that the petitioner is employed in Indian Army and his monthly income is Rs. 35,000/- and as such the maintenance amount fixed by the Principal Judge, Family Court, Siwan is just and proper.

Heard both sides. From perusal of record, it appears that the order has been passed *ex parte* against the petitioner and petitioner claims that he has not been given the opportunity of being heard, however, opposite party no. 2 has filed a counter affidavit showing that the petitioner refused to accept the notice. However, to serve the purpose of justice, it would be just and proper to provide an opportunity to the petitioner to participate in the proceeding.

In such view of the matter, order dated 25.01.2016 passed by the Principal Judge, Family Court, Siwan in Miscellaneous Case No. 173/2010 is set aside and the matter is



remitted back to learned Principal Judge, Family Court, Siwan to pass afresh order within a period of six months after providing opportunity to the petitioner to place his case and adduce the evidence on his behalf and also to cross-examine the witnesses of opposite party no. 2.

Needless to say both the parties shall cooperate in expeditious disposal of the case. At the same time, learned counsel for the petitioner is also directed to produce upto date salary slip issued by the department before the Principal Judge, Family Court, Siwan.

In the meantime, the petitioner is directed to pay Rs. 4,000/ per month to opposite party no. 2 and Rs. 2,500/- per month to her minor daughter as an interim measure till any final order is being passed by the Principal Judge, Family Court, Siwan.

With the above observation, this application is disposed of.

(Vinod Kumar Sinha, J)

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