

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.516 of 2016

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

Manjesh Kumar Rai @ Manjesh Kumar, Son of Late Umashankar Rai,
resident of Village Dahiya P.S. Bhagwanpur, District- Begusarai.

... .. Petitioner

Versus

1. State Of Bihar
2. Pushpa Kumari, D/o Late Ram Sreshta Singh, W/o Manjesh Kumar Rai,
resident of Village Hasanpur, P.S. Teghra, District- Begusarai, Matrimonial
Address resident of village Dahiya, P.S. Bhagawanpur, District- Begusarai.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Jai Prakash Singh, Advocate
For O.P. No.2	:	M/S Shrinandan Pd. Singh, Shashwat Shankar, Advocates
For the State	:	Mr. Parmeshwar Mahta, APP

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

9 12-07-2019 This revision application is directed against the order dated 12.1.2016 passed by learned Principal Judge, Family Court, Begusarai in Maintenance Case No. 40 M of 2011 whereby and whereunder learned Principal Judge has directed the petitioner to pay Rs.4,000/- per month to opposite party No.2, Rs.2,500/- to the minor son of the opposite party No.2, Rs.1200/- per month for education of her child and litigation cost of Rs.2000/- to opposite party No.2.

The fact giving rise to this revision application, in short, is that opposite party No.2 has filed a maintenance case on 23.4.2011 but the same was dismissed for default on



22.1.2013. Thereafter opposite party No.2 has filed a Miscellaneous Case No. 36 of 2013 for restoration of the Maintenance Case of 40M of 2011, which was allowed by learned Principal Judge vide order dated 22.10.2014.

The case of opposite party No.2 as per maintenance case, in short, is that marriage of opposite party No.2 was solemnized with the petitioner but after marriage her in-laws demanded a four-wheeler and cash of Rs.5 lac. Thereafter father of opposite party No.2 has given Rs.1 lac to her sasural family members. It is further stated that in the year 2007 opposite party No.2 gave birth of a male child, thereafter the opposite party No.2 has got information that her husband had solemnized second marriage and when she was protested then family members of her matrimonial house assaulted her and finally on 1.11.2009 ousted her from the matrimonial house. It is also her case that since then she has been living in her Naihar. She has also stated that petitioner-husband was a Constable earning Rs.15,000/- per month and as such she claimed Rs.5,000/- per month for her maintenance, including for her minor son.

It appears that in spite of paper publication, the petitioner has not appeared and as such learned Family Court has proceeded ex parte and examined two witnesses on behalf of



opposite party No.2-wife and after conclusion of the trial allowed the maintenance case, directing the petitioner to pay Rs.4000/- per month to the opposite party No.2, Rs.2,500/- per month to the minor son of opposite party No.2, Rs.1200/- per month for education expenses for her child and litigation cost of Rs.2000/- to opposite party No.2.

Being aggrieved by the aforesaid order, the present revision application has been filed by the petitioner-husband. The main ground for assailing the order is that without any proper publication of notice the case has been fixed for ex parte hearing and petitioner has been denied of opportunity to contest the maintenance case and produced his witnesses and cross-examined the witnesses of opposite party No.2-applicant. It is further submitted that now petitioner has been removed from service but the learned Family Court has not considered the same while passing the order for maintenance. Further submission is that opposite party No.2-wife is residing in his ancestral house using the usufructs but as petitioner has been denied opportunity of being heard he could not bring the above facts on the record. It is also submitted that the amount of maintenance is also excessive.

Learned counsel for opposite party No.2 has



countered to the submission of learned counsel for the petitioner and submitted that till date not a single penny has been paid to the opposite party No.2 by the petitioner, due to which she and her son are in a state of vagary and destitute.

Having heard both sides and perused the record. On perusal of the record it appears that the maintenance case has been decided ex parte. It further appears that the court has taken steps for substituted service but in spite of that petitioner has not appeared and order granting maintenance has been passed in back of the petitioner, as such he could not be given a chance to produce before the court his case. As such, ends of justice demands that an opportunity may be given to the petitioner to participate in the proceeding.

As such, without going into the merits of the case, I think it proper to remit the case back to the Family Court to decide the matter afresh within a period of nine months after giving an opportunity to the petitioner to cross-examine the witnesses adduced on behalf of opposite party No.2, adduce his evidence and if opposite party No.2 is so desired, she may also adduce additional evidence with a chance to cross-examine by the petitioner. Both the parties are directed to co-operate in the disposal of the maintenance case and appear as and when



required. It is also made clear that during pendency of the maintenance case the petitioner shall pay a lump sum amount of Rs.5000/- per month to opposite party No.2 as an interim measure for her maintenance and maintenance of her child.

Accordingly, the impugned order is set aside and this application is allowed with above observation.

(Vinod Kumar Sinha, J)

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