

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.592 of 2016

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

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Lal Babu Son of Kalimuddin @ Kattu Resident of Village- Panibag, Ward
No.9, P.S. District- Kishanganj.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Najima Begum W/o Lal Babu, D/o Halimuddin Resident of Village- Birna
Kalkali, P.S.- Kochadhaman, District- Kishanganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Radha Mohan Singh
For the Respondent/s : Mr.Akbar Aliapp

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

6 18-07-2019 This revision application has been filed against the

order dated 30.3.2016 passed in Maintenance Case No.148 of

2013 by the learned Principal Judge, Family Court, Kishanganj,

whereby and whereunder the learned Principal Judge has

allowed Rs.7,000/- per month to O.P.no.2 and her son as

maintenance and further directed that the said amount of

maintenance shall be payable till 15th day of each month from

the succeeding month of the order.

Facts giving rise to this application is that O.P.no.2
(applicant) has filed a maintenance case stating therein inter alia
that she was married with the petitioner and after the marriage
she came to the matrimonial house but after few days, the



petitioner and other accused persons started demanding some ornaments and for that started subjecting her to cruelty. It is also her case that on 10.2.2009, the family members of the petitioner assaulted her badly for dowry and kicked on abdomen of O.P.no.2 with intention to miscarriage her pregnancy and when her parents came to know about the same they intervened but the petitioner and other family members ousted her by snatching of ornaments. It is also the case that she is a illiterate lady and unable to maintain her whereas the petitioner is having monthly income of Rs.20,000/- per month besides that he has agricultural properties also. It appears that on notice as nobody appears, the case was processed *ex parte* and witnesses of the O.P.no.2 were examined.

After conclusion of the proceeding, the learned Family Court has allowed maintenance case directing the petitioner to pay Rs.7,000/- per month to O.P.no.2.

Being aggrieved by the same, the present application has been filed and the grounds for assailing the judgment is that without proper service of notice, the case has been fixed for *ex parte* hearing and as such petitioner has been denied the opportunity to be heard or to adduce the evidence or to cross examine the witnesses adduced on behalf of the O.P.no.2.



Further ground for assailing the order is that the learned court below has failed to assess the monthly income of the petitioner and only on surmise and conjecture assess income of petitioner Rs.20,000/- per month and accordingly, fixed maintenance amount of Rs.7,000/- per month for O.P.no.2 (applicant) and for her son.

In this case, notice was issued to O.P.no.2 and the office note as well as service report disclosed that O.P.no.2 has received notice on 4.6.2018 but nobody appears on behalf of O.P.no.2 nor any vakalatnama has been filed on her behalf.

Considering the facts as stated above and especially the fact that the impugned order allowing maintenance has been passed *ex parte* without giving opportunity to the petitioner to adduce the evidence or to cross examine the witnesses, as such for the ends of the justice, I think it is proper to remit this case back to the learned Family Court, Kishanganj for considering it afresh by giving opportunities to both the parties to adduce the evidence and also to cross examine the witnesses adduced on behalf of them. It is also made clear that both the parties shall co-operate in disposal of the maintenance case and the learned Family Court shall try to dispose of the same within a period of nine months.



Accordingly, this revision application is allowed, impugned order is set aside with condition that in the meantime, the petitioner has to pay Rs.3,000/- (three thousand) per month to O.P.no.2 .

(Vinod Kumar Sinha, J)

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