

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.753 of 2016

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

Uday Kumar, Son of Munsu Mahto, Resident of Village – Chandaut,
Police Station – Hilsa, Post Office – Chamarbigha, District –
Nalanda.

... .. Petitioners

Versus

- 1) The State Of Bihar
- 2) Anju Devi, Wife of Uday Kumar, daughter of Awadhesh Kumar.
- 3) Chandan Patel, Son of Uday Kumar.

Both Residents of Village – Chandaut, Police Station – Hilsa, Post
Office – Chamarbigha, District – Nalanda. Presently resides at village
– Bigha, Post Office – Bisabigha, Police Station – Ekagar Sarai,
District - Nalanda

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Meeta Sinha
For the Respondent/s : Mr.Sri Binod Kumar 2

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

7 01-08-2019 This revision application has been filed against the

judgment dated 09.07.2015 passed by learned Principal Judge,
Family Court, Nalanda at Biharsharif in Maintenance Case No.
67M/11, by which, the petitioner has been directed to pay Rs.
2,000/- each to opposite party no. 2 and her son (opposite party
no. 3. total Rs. 4,000/- towards their maintenance from the date
of filing of the case and Rs. 3,000/- each to opposite party no. 2
and opposite party no. 3 from the date of order.



Facts in short is that opposite party no. 2 filed a maintenance case in the court of learned Principal Judge, Family Court, Bihar Sharif at Nalanda stating therein that her marriage was solemnized with the petitioner on 07.06.2009 and after marriage she went to her sasural and live there for six days, thereafter, she came to her maike but the petitioner and his family members did not try to bring her back. Her further case is that father of the petitioner asked the father of opposite party no. 2 to take the petitioner to Bombay, where he was doing job and as such, the father of opposite party no. 2 took the petitioner to Bombay and engaged him in some job. In the meantime, opposite party no. 2 became pregnant. Further case is that petitioner, thereafter, asked opposite party no. 2 to give Rs. 25,000/-, which was given to the petitioner by father of opposite party no. 2 but in spite of that petitioner left the job and returned to his village leaving his pregnant wife at Bombay and started working as Electric Mistri in Hilsa in Subodh Electric in Munna Market and he also earns by doing private electrical work. Further case is that she came to her village but petitioner is not helping her and not provided any expenses for her and her minor son and he demanded Rs. 25,000/- for construction of toilet and on non fulfillment of the same, he ousted her and her



son from the house.

In this case, it appears that in spite of substituted service of notice i.e. by paper publication but the petitioner did not choose to appear before the learned Principal Judge, Family Court and, thereafter, the maintenance case proceeded ex parte.

During trial altogether, three witnesses were examined on behalf of the opposite party no. 2. Learned Principal Judge, Family Court on conclusion of trial has allowed the maintenance case filed by opposite party no. 2 and directed the petitioner to pay Rs. 2,000/- each to opposite party no. 2 and her son (opposite party no. 3. total Rs. 4,000/- towards their maintenance from the date of filing of the case and Rs. 3,000/- each to opposite party no. 2 and opposite party no. 3 from the date of order.

Being aggrieved by the same, the petitioner has preferred instant revision application.

The ground taken by the petitioner is that he has not been given the opportunity to file his show cause and adduce evidence on his behalf and the order has been passed in his back.

Learned counsel appearing on behalf of opposite party nos. 2 and 3 supported the impugned judgment and submitted



that in spite of substituted service of notice, the petitioner himself has not choose to appear in the case and it cannot be said the he has not been given the opportunity of being heard and further the witnesses adduced on behalf of opposite party nos. 2 and 3 have supported their case as stated in the maintenance case and further the petitioner has also solemnized marriage with another lady on 05.06.2009.

No doubt, the witnesses have not been cross-examined, as the case has been fixed ex parte but there is nothing available on record to show that the petitioner has moved any petition for setting aside the order of proceeding ex parte or he ever tried to participate in proceeding before the learned Family Court.

In view of the above discussion and for the ends of justice, this court deems it proper to grant a chance to the petitioner to participate in proceeding and to place his case.

In such view of the matter, this revision application is allowed and the judgment dated 09.07.2015 passed by learned Principal Judge, Family Court, Nalanda at Biharsharif in Maintenance Case No. 67M/11 is set aside. The matter is remitted back to the learned Principal Judge, Family Court, Nalanda at Biharsharif for passing afresh order after providing



opportunity to the petitioner to adduce evidence on his behalf and also allow him to cross-examine the witnesses adduced on behalf of opposite party no. 2. It is also open to opposite party no. 2 to adduce more evidence or to cross-examine the witnesses, who would be adduced on behalf of the petitioner.

Both the parties are directed to cooperate in disposal of maintenance case and thereafter, the learned Principal Judge, Family Court, Nalanda at Biharsharif will conclude the proceeding and pass the order within a period of nine months.

In the meantime, the petitioner is directed to pay Rs. 2,000 to opposite party no. 2 and Rs. 2,000/- to opposite party no. 3 towards their maintenance as an interim measure.

With the above direction and observation, this application is allowed.

(Vinod Kumar Sinha, J)

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