

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.6 of 2016

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

Sumanto Aich Son of Late Dr. Jitendra Chandra Aich, resident of Mohalla-
Netajee Park, Chakdah A-10/51, P.S.- Chakdah, District- Nadia, West Bengal.
... .. Petitioner

Versus

1. Kakoli Aich and Anr. Daughter of Sanjeev Kumar Bhowmik, Wife of Sumanto Aich, presently residing at Mohallla- Barikihanjarpur Gurubat Ali Jamadar Lane, P.S.- Barari, District- Bhagalpur.
2. The State of Bihar.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.M.N. Parbat, Adv
Mr. Abhay Kumar Singh, Adv.
For the Respondent/s : Mr.Ram Naresh Roy App.
For the opposite party no.1 : Mr. Dhananjay Kumar Gupta, Adv.
Mr. Deepak Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

5 24-01-2019 This revision application is directed against the order dated 30.09.2016 passed in Misc. (Maintenance) Case No. 08 of 2011 by Principal judge, Family Court, Bhagalpur, whereby he has enhanced the maintenance of Rs. 2,000/- to Rs. 4,000/- to opposite party no. 1 under Section 127 of the Cr.P.C.

Case in short is that opposite party no. 1 had earlier filed a maintenance case before the Family Court, Bhagalpur under Section 125 of the Cr.P.C., and the learned Principal Judge, Family Court, Bhagalpur vide order dated 20.03.2007 has ordered the petitioner for payment of Rs. 3,000/- per month to opposite party no. 1 as maintenance, which was subsequently modified to Rs. 2,000/- per month, by the then



coordinate Bench of this Court vide order dated 18.01.2011 passed in Cr. Revision No. 596 of 2008.

Thereafter, the opposite party no. 1 filed miscellaneous petition, which was numbered as Miscellaneous (Maintenance) Case No. 8/2011 for enhancement of the maintenance from Rs. 2,000 to Rs. 7,000/- under Section 127 of the Cr.P.C. contending that her son started studying in D.A.V. Public School, Bhagalpur, which is very costly and the price of domestic articles have also gone high and it is not possible for her to maintain herself and her minor child.

On 24.03.2012, the petitioner appeared through his lawyer but thereafter, he did not appear in the said maintenance case and the case proceeded ex parte and the petitioner was debarred from filing the show -cause.

It appears that the learned Family Court vide order dated 30.09.2015 passed the order in Miscellaneous (Maintenance) Case No. 8/2011, whereby, he has enhanced the maintenance amount of Rs. 2,000/- to Rs. 4,000/- to be paid by petitioner to opposite party no. 1 on each month regularly.

It further appears from perusal of record that this Court vide order dated 09.03.2018 directed for issuance of notice to opposite party no. 1 and in the meantime, the petitioner was directed to pay an amount of Rs. 2500/- per



month to opposite party no. 1.

The sole ground taken by the petitioner for assailing the impugned order of learned Family Court, Bhagalpur is that before passing an order on the Miscellaneous (Maintenance) Case No. 8/2011, the petitioner has not been heard and the order has been passed in his back and although petitioner tried to file show-cause but he was not allowed to do so. Further submission is that petitioner is all along ready to keep the opposite party and his son with full honour and dignity but it is the opposite party no., who does not want to live with the petitioner.

On the other hand, learned counsel for opposite party no. 1 countered the submission of learned counsel for the petitioner and submitted that sufficient opportunities were given to the petitioner to place his case but he did not choose to appear and even the petition filed by the petitioner at the time of hearing was not affidavited and, therefore, the Family Court has rightly passed the ex parte order enhancing the maintenance of Rs. 2,000/- to Rs. 4,000/-.

Having heard both sides, considering the fact aforesaid facts and circumstances, it is admitted that the impugned order has been passed ex parte enhancing the maintenance amount from Rs. 2,000/- to Rs. 4,000/-, as such, for the ends of justice, the matter is remanded back to the



Family Court, Bhagalpur to for passing a fresh order after hearing both the parties on the petition under Section 127 of the Cr.P.C. within a period of four months from the date of receipt/production of a copy of this order.

Needless to say both the parties shall cooperate in expeditious disposal of the case, otherwise, the Family Court, Bhagalpur will be free to pass any order within the period directed by this Court.

In the meantime, the petitioner is directed to pay Rs. 2500/- as maintenance to opposite party no. 1 from the date of order passed by this Court till the matter is finally decided by the Family Court, Bhagalpur. It is also made clear that if any amount of opposite party no. 1 is due with the petitioner, she shall move before the Family Court, Bhagalpur for appropriate direction, which will be considered by the Family Court, Bhagalpur in accordance with law.

Accordingly, this revision application is allowed. Order dated 30.09.2016 passed in Misc. (Maintenance) Case No. 08 of 2011 by Principal judge, Family Court, Bhagalpur is set aside with above observation.

(Vinod Kumar Sinha, J)

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