

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.137 of 2019

Arising Out of PS. Case No.- Year-0 Thana- District- Begusarai

Meena Devi Wife of Ravindra Prasad Singh @ Ravindra Singh Resident of
Mohanand Kutir, PO- Jaitpura, P.S.- Barhiya, District- Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ravindra Prasad Singh @ Ravindra Singh Son of Late Nand Lal Prasad
Singh Resident of Mohalla- Harinathnagar, P.S.- Begusarai, District-
Begusarai. State- Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Manisha Singh, Advocate
For the Respondent/s	:	Mr.Anil Kumar, APP
For O. P. No. 2	:	Mr. S. K. Lal, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

10 24-02-2020 Heard learned counsel for the petitioner and learned
counsel for the O. P. No. 2.

The petitioner in this case is aggrieved by and
dissatisfied with the order dated 07.05.2018 passed in
Maintenance Case No. 93M of 2014 by the learned Principal
Judge, Family Court, Begusarai by which the learned Principal
Judge has been pleased to dismiss the Maintenance Case No.
93M of 2014 vide order dated 07.05.2018 on the ground that the
petitioner was not present on the said date and her lawyer could
not appear to move the time petition.

Learned counsel for the petitioner submits that on
07.05.2018 the maintenance case was fixed for evidence,



however, on the said date in Maintenance Case No. 93M of 2014 there was no order for personal appearance of the petitioner. Learned counsel for the petitioner filed a time petition but then learned Principal Judge took a view that in the connected Divorce Case No. 6 of 2015 since the petitioner was called upon to appear in person and she was not present as also that her Advocate did not appear to press the time petition, her maintenance case is liable to be dismissed in default.

It has been categorically submitted that the petitioner was not even aware of the order dated 19.04.2018 passed in Divorce Case No. 6 of 2015 by which the petitioner was called upon to appear in person in the divorce case. It is further submitted that on the earlier two dates, the order-sheets will show that the petitioner had filed her Haziri but at least on 03.05.2018 the Presiding Officer himself was on leave and for that reason the matter was not taken up.

Learned counsel for the opposite party no. 2 submits that this revision application under Section 19(4) of the Family Court Act 1984 (hereinafter referred to as the 'Act of 1984') is not maintainable. According to learned counsel, under subsection (4) of Section 19 of the Act of 1984 High Court may of its own motion or otherwise, call for and examine the record of



any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that the learned Principal Judge, Family Court, Begusarai has apparently erred in dismissing the Maintenance Case No. 93M of 2014 on 07.05.2018 when learned counsel for the petitioner did not appear to press the time petition.

In the opinion of this Court, it is well settled that in case of filing of a time petition, the learned court could not have while passing the order dismissing the time petition rejected the main case itself by same stroke of pen. If at all the court was not willing to grant time and was of the view that the time petition should be rejected, after rejecting the time petition, the court should have fixed the matter either for the second call or on the next date and only after giving that opportunity if the court would have been of the opinion that the petitioner is not taking interest in the matter the application could have been dismissed.



In this case the learned Presiding Officer has dismissed the main petition by the same stroke of pen itself and therefore, it has resulted in injustice and prejudice to the petitioner.

So far as the submission of learned counsel for the opposite party no. 2 the ground that the maintainability is concerned, this Court is not finding itself impressed with that argument. Section 19(4) of the Act of 1984 talks of an order under Chapter IX of the Code of Criminal Procedure, 1973 with the only rider that such order should not be an interlocutory order.

In the present case it is an admitted position that the proceeding under Section 125 Cr.P.C. was registered under Chapter IX of the Cr.P.C. and it is this proceeding which has been dismissed by passing the impugned order dated 07.05.2018.

This Court has therefore, no iota of doubt that the order not being an interlocutory order have been passed in relation to a proceeding under chapter IX of the Cr.P.C. may be examined by this Court sitting in its revisional jurisdiction. The objection raised on behalf of opposite party no. 2 is thus, not acceptable to this Court.



The order not being in-conformity with the principles of natural justice, is liable to be set-aside.

This Court therefore, sets-aside the impugned order dated 07.05.2018 and restore Maintenance Case No. 93M of 2014. Learned Principal Judge, Family Court, Begusarai shall now proceed with the said Maintenance Case in accordance with law after giving proper notice to the parties with regard to the date to be fixed in the said matter.

This revision application stands allowed.

(Rajeev Ranjan Prasad, J)

avin/-

U		T	
---	--	---	--

