

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1347 of 2018

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

Ashok Chaudhary @ Ashok Kumar S/o Amod Chaudhary, Resident of
Village- Bharatkhand Akha, P.S.- Parbatta, District- Khagaria.

... .. Petitioner

Versus

1. The State of Bihar
2. Rupam Kumari, W/o Ashok Kumar Chaudhary, D/o Diwakar Mishra, R/o
Village- Bharatkhand Akha, P.S.- Parbatta, District- Khagaria, at present
reside at Village- Kanhyachak P.S. Parbatta, District- Khagaria.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Siya Ram Shahi, Advocate Mr. Ram Sevak Choudhary, Advocate
For the Respondent/s	:	Mr. Sri Lalan Kumar, APP
For O. P. No. 2	:	Mr. Pankaj Kr. Singh, Advocate Mr. Anil Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 14-02-2020 Heard learned counsel for the petitioner as well as

learned counsel for the opposite party no. 2 as also learned counsel

for the State.

The petitioner in this case is aggrieved by and
dissatisfied with the ex-parte order dated 06.08.2018 passed by
learned Principal Judge, Family Court, Khagaria in Maintenance
Case No. 36 of 2017 by which the learned Principal Judge has
directed the petitioner to pay a sum of Rs. 10,000/- per month as
maintenance to his wife and Rs. 5000/- per month to his son
making a total of Rs. 15,000/- per month till she remarry and the
son attains majority.

Learned counsel for the petitioner has submitted before
this Court that on 08.05.2017 the opposite party no. 2 filed an



application under Section 125 Cr.P.C. before the learned Family Court, Khagaria, soon thereafter, on 05.09.2017 there have been an agreement between the parties whereunder the wife agreed to receive a sum of Rs. 8000/- per month as maintenance for her and this petitioner also agreed and assured that he would continue to pay the said amount of Rs. 8000/- per month till he keeps his wife in her *maike*. Till the date of the agreement, the petitioner had not been served with the notice of the case under Section 125 Cr.P.C., therefore, it is the submission of learned counsel for the petitioner that the petitioner did not get mention the fact that after agreement between the parties, the case filed by her towards maintenance shall not be proceeded against. In his submission, after getting entered into the agreement, the opposite party no. 2 proceeded with the maintenance case and the learned Family Court fixed the case for ex-parte hearing without there being any service report of notice served on the petitioner.

It is submitted that while awarding a sum of Rs. 15,000/- per month, the learned Family Court was not aware that there was an agreement between the petitioner and his wife and for that reason those facts were not incorporated in the impugned order and no consideration there of could be given.

Learned counsel for opposite party no. 2 has after going through the records received from the court below accepted that on



record there is no service report of notice upon the petitioner and there is no valid service of notice.

Learned counsel, however, submits that the impugned order/judgment is not only with respect to the wife but is also with respect to the minor son of the petitioner about whom there was no maintenance fixed in the agreement.

In course of submission both the parties have agreed to the extent that in terms of agreement dated 05.09.2017, the petitioner shall continue to pay Rs. 8000/- per month to the opposite party. Presently only two months payment has been made. This Court has been assured that the rest amount of the payment in terms of the agreement dated 05.09.2017 (Annexure '2') shall be made within a period of six weeks from today and whatever be the outstanding amount with effect from the date of agreement, the same would be paid in the account of the opposite party no. 2.

Learned counsel for the opposite party no. 2 admits that there is no notice and hence, the impugned judgment may be set-aside for the present on that ground and the matter be remitted to the learned court below for a fresh consideration where the entire facts and circumstances will be dealt with.

In view of the aforementioned submissions and the discussions as also the consensus between the parties, this Court



hereby sets-aside the impugned judgment dated 06th August, 2018 passed in Maintenance Case No. 36 of 2017 and remit the matter to the court of learned Principal Judge, Family Court, Khagaria for a fresh consideration where both the parties shall put their appearance by 2nd of March, 2020.

In terms of the undertaking and assurance given before this Court, the petitioner would be obliged to pay the entire outstanding amount of maintenance since the date of agreement dated 05.09.2017 after adjusting the payment if any made during this period to the opposite party no. 2 within a period of six weeks from today and in the meantime, he would also continue to pay the current amount.

The opposite party no. 2 shall receive the aforesaid amount without there being any prejudice to her rights and contentions as also the rights of her minor son and those will be subject to the result of the final outcome of the proceedings under Section 125 Cr.P.C.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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