

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.917 of 2018

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

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Shailesh Mishra @ Shailesh Awadh Kishore Mishra S/o Awadh Kishore Mishra, resident of Village- Rangra, P.S. Rangra, District- Bhagalpur. At present residing at 8/a Sharda Estate, L.T. Road, Vazira Naka, Borivali, P.S. Borivali, District- Mumbai Maharashtra.

... .. Petitioner

Versus

1. The State of Bihar
2. Jyoti Mishra W/o Shailesh Mishra, D/o Late Prem Narayan Jha.
3. Jasu Kumari (17 years) D/o Shailesh Mishra.
4. Anshu Kumari (15 years) D/o Shailesh Mishra.
5. Kashish Kumari (13 years) D/o Shailesh Mishra.
6. Putul Kumari (10 years) D/o Shailesh Mishra.

All are the residents of Village- Rangra, P.S. Rangra, District- Bhagalpur, At present residing at Village Hridaya Ganj, Koshi Colony Katihar, P.S. and District- Katihar.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr.Jitendra Kumar Pandey, Advocate
For the O.P. No. 2	:	Mr. Rajendra Pd. Shah, Advocate
		Mr. Ratnakar Ambastha, Advocate
For the Respondents	:	Mr. Rajendra Prasad Nat, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 13-02-2020 Heard learned counsel for the parties.

Petitioner in this case is aggrieved by and dissatisfied with the order dated 19.10.2016 passed by learned Additional Principal Judge, Katihar in Maintenance Case No. 324 of 2015.

By the impugned order, the learned Additional Principal Judge has awarded a sum of Rs.7000/- per month to Opposite Party No. 2 to 6 as maintenance.

It is the grievance of the petitioner that the Opposite



Party No. 2 who happens to be his wife has left the matrimonial home where the family including the petitioner were residing. In this connection, he has stated in paragraph '5' of his application that the father of the petitioner has got a piece of land in CHAL Borivali, Mumbai in the year 1970 and it is because the Opposite Party No. 2 was looking for partition of the said land and transfer in her favour, a dispute broke out and it is the Opposite Party No. 2 who left the house of the petitioner in Mumbai and decided to live in the native village on her own with two daughters.

It is submitted that here at Katihar, the Opposite Party No. 2 filed an application under Section 125 of Cr.P.C. giving the address of the petitioner as that of his village and not of Mumbai and that is how the notice was got served on the village address where the petitioner is not residing. It is submitted that the petitioner was not aware of the on-going proceeding in the Court of learned Additional Principal Judge, Family Court, Katihar and in his absence the judgment has been passed ex-parte.

Learned counsel submits that because the petitioner was not given an appropriate opportunity to defend himself, he was unable to adduce evidence which has caused prejudice to



his case and he has been directed to pay a sum of Rs.7000/- per month towards maintenance without considering that it was in fact the Opposite Party No. 2 who had chosen to live in the native village on her own.

On the other hand, learned counsel for the Opposite Party No. 2 to 6 submits that the petitioner has got his connections with his village and notice was duly served at his village address but he did not enter appearance and no contest was made in the court below.

It is submitted that the court below has awarded only a sum of Rs.7000/- per month towards maintenance of OP no. 2 and her two daughters and by no stretch of imagination, the said amount may be said to be unreasonable or exaggerated keeping in view that the petitioner is in service and working at Mumbai.

Having heard learned counsel for the parties and on perusal of the records, particularly the copy of the application under Section 125 Cr.P.C as contained in Annexure '1' to the present application, this Court finds that in the application filed in the court below, the address of the petitioner was shown as of his village whereas it is an admitted position that the petitioner is working at Mumbai. If the petitioner is working at Mumbai and this is known to the O. P. No. 2 to 6, by



not furnishing his current address of Mumbai the applicant has in fact tried to withheld the service of notice and thereby proper opportunity to defend could not be made available to the petitioner.

This being the position, without going into any other issue, at this stage, this Court sets-aside the impugned order and remand the matter to the learned Additional Principal Judge, Family Court, Katihar for a fresh consideration by giving an opportunity to the petitioner to defend himself.

Learned counsel for the petitioner undertakes that the petitioner would appear in the court below by 2nd of March, 2020 and shall proceed to participate in the matter and would not seek any unnecessary adjournment in the matter.

The court below is directed to dispose of the proceeding within a period of 90 days from the date of receipt/production of copy of this order.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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