

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1050 of 2018

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

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Md. Khurshid @ Md. Khurshid Alam son of Late Md. Nazir, Resident of
Mohalla- Gangjala Ward No. 15, P.S. + District- Saharsa.

... .. Petitioner.

Versus

1. The State of Bihar.
2. Sajda Khatoon, wife of Md. Khurshid, D/o Md. Abbas
3. Md. Pyre , under the guardainship of fatehr Md. Khurshid @ Md. Khurshid Alam.
4. Md. Amir, Both minor sons of Md. Khurshid & under the guardianship of mother Sajda Khatoon, Resident of Mohalla- Gangjala Ward No. 15, P.S. District- Saharsa, at present Bhatkhora, Tola Sonbarsa, P.S.- Murliganj, District- Madhepura.

... .. Respondents.

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra
For the Respondent/s : Mr. Amit Kumar Rakesh

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

4 23-11-2021 Heard learned counsel for the petitioner and learned
APP for the State.

The present revision application has been preferred against the order dated 28.05.2018 passed by the learned Principal Judge, Family Court, Madhepura in Misc. (Maintenance) Case No.13 of 2015 filed under Section 125 Cr.P.C. by which the petitioner has been directed to pay Rs.10,000/- per month for the maintenance of opposite party no.2 and Rs.5000/- per month for her minor child, namely, Md. Amir from the date of filing of the application i.e. from



30.01.2015.

At the very outset, learned counsel for the petitioner submitted that as the petitioner was remanded in judicial custody, he could not file his written statement before the learned court below and was debarred from filing his objection/W.S. He further submitted that as petitioner was debarred from filing objection/W.S., the witnesses produced on behalf of opposite party no.2 could not be cross-examined to ascertain the actual income of the petitioner and virtually an *ex-parte* order was passed against him.

Having heard the parties and perusing the case record, in my view, the petitioner has remedy to file an application under Section 126 Cr.P.C. before the learned Court below for recalling the impugned order but without availing the same, he has straightway come before this Court.

In such view of the matter, the petitioner is directed to file an application before the learned Court below under Section 126 (2) Cr.P.C. within a period of six weeks. Till final hearing of this application by the learned Court below, petitioner is directed to pay Rs.5,000.00 (Rupees Five Thousand) per month to opposite party no.2 from the date of the order i.e. from 28.05.2018. It is made clear that if the petitioner does not file



such application, as aforesaid, within the stipulated period, then
impugned order dated 28.05.2018 will be made effective.

Accordingly, the order dated 28.05.2018 passed in
Misc. (Maintenance) Case No.13 of 2015 is hereby set aside.
Interlocutory Application, if any, also stands disposed of.

(Anjani Kumar Sharan, J)

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