

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL REVISION No.1396 of 2010**

Ghanshyam Yadav S/O Suresh Yadav R/O Village- Thatha Tola Bahiyar, P.S.-
Mansi, District- Khagaria

... .. Petitioner

Versus

1. The State Of Bihar
2. Fulan Devi D/O Shivanandan Sah, W/O Ghanshyam Yadav R/O Village-
Chaidha, P.S.- Maheshkhoont, District- Khagaria

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar, Advocate
For the State	:	Mr. Akhileshwar Dayal, APP
For the O.P. No. 2	:	Mr. Binay Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

9 18-11-2022 Heard learned counsel for the petitioner and learned
counsel for the opposite party no.2.

This revision application has been filed for setting aside the order dated 29.06.2010 passed by learned Principle Judge, Family Court, Khagaria in Maintenance Case No. 38 of 2008 by which the learned court has been pleased to direct the petitioner to pay a sum of Rs. 1,500/- to the opposite party no. 2.

Learned counsel for the petitioner submits that on a bare reading of the impugned order, it would appear that it is an ex parte order. It is his submission that the petitioner was not duly served and the impugned order has been passed ex parte without providing opportunity of hearing to the petitioner.

Learned counsel submits that because of an ex parte



hearing, serious prejudice has been caused to the petitioner in as much as the learned Family Court has accepted the statement of the applicant that her marriage was solemnized with this petitioner in the year 2004. It is his submission that had the petitioner been present in the court, he would have pointed out that the applicant was married to one Horil Shah and in this connection she had filed one FIR against her husband Horil Shah on 29.10.2004. Copy of the said FIR is Annexure '2' to the present application which has not been controverted by opposite party no. 2.

Learned counsel further submits that from Annexure '1' which is a copy of the petition under Section 125 Cr.P.C., it will appear that the applicant claimed her marriage with this petitioner in the month of "Phagun, 2004", whereas at least six months thereafter in the month of October, 2004 she was claiming herself as wife of Horil Shah in the FIR.

This application has been contested by learned counsel for O.P. No. 2. It is submitted that no doubt, the applicant was earlier married to Horil Shah but after her breakup from said Horil Shah, she had married to the present petitioner. Learned counsel is however unable to show that in this case the notice of the case was duly served upon the present petitioner.



Having heard learned counsel for the petitioner and learned counsel for O.P. No. 2 as also upon perusal of the records, this Court is satisfied that there is no proper service of notice upon the petitioner in the learned court below. This Court is also satisfied prima-facie that there are some materials on the record in connection with the case alleged by the opposite party no. 2 against her erstwhile husband Horil Shah. The FIR lodged by the O.P. No. 2 against Horil Shah claiming that she was married with him in the year 1987 and had got four children out of the said wedlock. Further, there is also a copy of the deposition of O.P. No. 2 in G.R. No. 1423 of 2004. These materials are required to be appreciated by the learned Family Court.

In the given facts and circumstances, this Court is of the opinion that the ex parte order cannot sustain the taste of law and it is liable to be set aside on the ground of violation of principles of natural justice alone.

The impugned order is, therefore, set aside. The matter is remitted to the learned Principle Judge, Family Court, Khagaria. Let the learned Principle Judge, Family Court, Khagaria fix a date for appearance of the parties within a period of two weeks from the date of receipt/production of a copy of



this order. This Court would expect that the learned Principle Judge, Family Court, Khagaria shall dispose of the application after giving appropriate opportunity to both the sides to adduce their respective evidences and hearing. In any case, the entire exercise must be completed within a period of six months from the date of receipt/communication of a copy of this order.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

lekhi/-

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

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

