

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1137 of 2018

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

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Umesh Chandra Lal Shrivastava Son of Late Govind Shrivastava, resident of Manendragarh, Aanwa Kherwa Road, Paryag Sadan in front of City Cable P.S. P.O.- Manendragarh, District- Korla Chhatishgarh.

... .. Petitioner

Versus

1. The State Of Bihar
2. Shashi Devi, Wife of Umesh Chandra Lal Shrivastava
3. Neha Kumari, Daughter of Umesh Chandra Lal Shrivastava.
4. Nitish Kumar Lal, Son of Umesh Chandra Lal Shrivastav, All three are resident of Village Post Office- Nimethi, P.S.- Barheri, District- Darbhanga Bihar.

... .. Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Anil Kumar Singh, Advocate
For the State	:	Mr. Akhileshwar Dayal, APP
For the O.Ps.	:	Mr. Uma Shankar Singh, Advocate
		Dr. Satyendra Kr. Shrivastava, Advcoate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 06-09-2022 Heard learned counsel for the petitioner, learned APP for the State and learned counsel for the opposite parties.

Petitioner is aggrieved by and dissatisfied with the order dated 09.03.2017 passed by learned Principal Judge, Family Court, Darbhanga in Maintenance Case No. 242 of 2015 by which the learned Principal Judge has awarded maintenance of Rs. 2000/- per month to O.P. No. 2-wife and Rs. 2000/- per month to O.P. No. 3-daughter.

Learned counsel for the petitioner submits that this revision application is fit to be allowed on the solitary ground



that the petitioner was not duly served in this case. It is submitted that petitioner seriously disputes his marriage with the opposite party no. 2 and opposite party no. 2 being fully aware of the correct address of the petitioner did not mention the correct address of the petitioner, no notice was served upon him and the case was fixed for ex-parte hearing. It is submitted that the non-service of notice has seriously prejudiced the case of the petitioner.

Learned APP for the State as well as learned counsel for O.P. No. 2 have opposed this application. Learned counsel for O.P. No. 2 submits that the notice was duly issued to the petitioner on his village address but despite service of notice, he did not appear in the case and therefore, the learned court below has rightly fixed the matter for ex-parte hearing.

Learned counsel for the O.P. No. 2 further submits that in paragraph '7' of this application before this Court, the petitioner admits that when he had visited his village some time back, he had provided some money to the O.P. No. 2 and had transferred some amount in her account. According to him, this statement of the petitioner would go a long way to show that this opposite party no. 2 is the legally wedded wife of the petitioner who has been neglected and the petitioner performed



a second marriage while in military service. It is submitted that the O.P. No. 2 was not aware of the second marriage performed by the petitioner.

This Court has perused the lower court records. It is noticed that on 14.01.2016, the learned Incharge Principal judge admitted the application under Section 125 Cr.P.C. and directed for filing of requisites of notice by both modes. On 29.03.2016, the case was fixed for 24.05.2016 awaiting service report of notice. On 24.05.2016, the service report of registered notice was available on the record. A perusal of the same would show that the notice was returned unserved with an endorsement 'left'. The envelope is though in torn condition but the endorsement made on the backside of the envelope is evident. On record, there is no service report of notice by process server.

In these circumstances, the only option left was to either send the notice again on the correct address of the petitioner or to go for substituted service of notice but no such step was taken.

This Court finds that in its order dated 16.08.2016, learned Principal Judge, Family Court, Darbhanga has wrongly recorded that all the process has been exhausted. Learned counsel for the petitioner has shown to this Court that the



notices were not sent on the correct address.

In the given facts and circumstances of the case, this Court is of considered opinion that the impugned order suffers from violation of principles of natural justice and is liable to be set aside. The impugned order is accordingly set aside. The matter is remitted to the learned Principal Judge, Family Court, Darbhanga.

Let both the parties appear in the court below on 10th of October, 2022 through their learned counsel.

The learned Principal Judge, Family Court, Darbhanga, shall proceed with the matter and decide the application under Section 125 Cr.P.C. afresh giving opportunity to both the parties. This Court expects that the application shall be disposed of within 4 months after appearance of both the parties.

This application stands disposed of accordingly.

Let the LCR be returned to the court below.

(Rajeev Ranjan Prasad, J)

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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'.

