

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.60 of 2021

Arising Out of PS. Case No.- Year-0 Thana- District- Jamui

Nitish Kumar, S/o Ramlal Mahto, Resident of Village- Billo, P.S.- Ramgadh
Chowk, Distt- Lakhisarai.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Arti Kumari W/o Nitish Kumar, D/o Gobind Mahton Resident of Village-
Sangtho, P.S. and Distt- Jamui.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Praveen Kumar Agrawal, Adv.
For the O.P.No.1	:	Mr.Satyendra Prasad, APP
For the O.P.NO.2	:	Mr.Prakash Mahto, Adv.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 25-07-2022

I.A. No.1 of 2022

This application has been filed seeking condonation of delay of about one year in filing of the present revision application. According to the petitioner, he was not served with the notice of the proceeding under Section 125 Cr.P.C., hence, he was not aware of the judgment of the court. In paragraph '5' of his application, he has stated that he came to know about the proceeding of the maintenance case on 14.05.2019 then he applied for certified copy of the impugned order and received the certified copy of the impugned judgment dated 17.12.2019.

This Court finds from the statements made in the interlocutory application that in paragraph '5' of the application



the petitioner admits to have come to know about the proceeding of the maintenance case on 14.05.2019.

This Court having noticed the aforesaid aspect of the matter which will be dealt hereinafter while considering the case of the petitioner on merit is of the view that because the impugned judgment was passed on 17.12.2019 and only about three months thereafter the pandemic period had started, the delay in filing of the revision application is required to be condoned.

Let this application be allowed.

Heard learned counsel for the petitioner, learned counsel for the opposite party no.2 and learned APP for the State.

This application has been preferred seeking setting aside of the judgment dated 17.12.2019 passed in Maintenance Case No.59M/2019 under Section 125 Cr.P.C. by which the learned Principal Judge, Family Court, Jamui has directed the husband-petitioner to pay a sum of Rs.5,000/- per month as maintenance allowance to the applicant-wife.

It appears on perusal of the impugned judgment that the learned Principal Judge proceeded to consider the matter after fixing the case for ex-parte hearing vide order dated



23.10.2019.

The order-sheets would show that the application was filed on 04.05.2019. It was admitted on 21.05.2019. The summons were issued to the petitioner on 12.07.2019 but the service report of service of notice was not available on the record. On 23.10.2019, a prayer was made on behalf of the applicant-wife to fix the case for ex-parte hearing. The court was informed that the notice was issued to the opposite party-petitioner by registered post on 12.07.2019 which had not returned unserved. The learned Principal Judge, Family Court held that because the notice had not returned unserved, therefore, it will be deemed to have been served and proceeded to fix the matter for ex-parte hearing.

The applicant-wife examined herself and two other witnesses. Her case in the learned court below was that after her marriage on 29.04.2018 with the opposite party she went to her sasural and lived there for about one month. She alleged that she was ousted from the matrimonial house when her parents were unable to fulfill the demand of Rs.5 lacs in cash and a motorcycle to the opposite party-husband.

She proved before the learned court below that she had no independent income to maintain herself whereas her



husband is doing a private job in textile mill at Ludhiyana (Punjab) and earns a salary of Rs.18,000/- per month. Her husband has also got two bighas of fertile land from which he earns a sum of Rs.1 lacs annually.

The learned court below having examined the materials available on the record allowed a sum of Rs.5,000/- per month as maintenance to the applicant-wife.

While dealing with the application for condonation of delay, this Court has noticed the statement of the petitioner that he came to know about the proceeding on 14.05.2019 which is the very first date on which the application seeking maintenance was filed in the learned court below.

Be that as it may, with a view to consider the prayer of the petitioner for setting aside of the impugned order on the ground of its being an ex-parte judgment, this Court called upon learned counsel for the petitioner to inform this Court as to what the petitioner is doing and what is his income from his job. Learned counsel has submitted that earlier he was working in the textile mill but during the lockdown period he was not working and presently where he is and what he is doing is not known to him.

Learned counsel for the opposite party no.2 submits



that admittedly the opposite party no.2 is legally wedded wife of the petitioner and she is being neglected by the petitioner for all these years. She has no independent source of income, therefore, the petitioner be directed to make available a reasonable amount to the opposite party no.2 from which she can maintain herself to some extent.

Having heard learned counsel for the petitioner and the opposite party no.2 as also on perusal of the records, this Court finds that in paragraph '5' of the interlocutory application the petitioner has made contradictory statements. In paragraph '4' he says that the notice of the court proceeding was not served upon him. In paragraph '5' it is his categorical statement that he came to know regarding the proceeding of maintenance case on 14.05.2019. At this stage, learned counsel for the petitioner has tried to improve upon this by saying that it has happened because of some typographical error.

Be that as it may, this Court repeatedly called upon him to take a bonafide plea as to whether the petitioner is ready to provide some help to his wife, this Court could gather from his submission that he is only interested in getting the matter remanded to the learned court below for fresh consideration and during this period he is not willing to come forward to pay a



single penny to his legally wedded wife.

This Court understands that the petitioner is not coming clean before this Court and he is not taking a bonafide plea. He is not even ready to shoulder his responsibility towards his wife who is waiting for some help in absence of any independent source of income. The amount fixed by the learned court below is only Rs.5,000/- per month which is a meagre amount and admitted position is that the petitioner was working in the textile mill earlier, though it is claimed by way of oral submission that during lockdown period he was not working but at the same time his present job and place of job are not being disclosed.

In the opinion of this Court, the interest of justice requires that no interference be made with the impugned judgment. This application is, thus, dismissed.

Let the learned court below proceed to enforce the judgment by realizing the amount in accordance with law.

(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'.

