

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1105 of 2019

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

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Dhanyog Paswan @ Dhanjog Paswan, Son of Tarkeshwar Paswan, Resident of Village - Bajidpur, P.S.- Mehrama, District- Godda (Jharkhand)

... .. Petitioner/s

Versus

1. The State of Bihar
2. Daisy Devi, Wife of Dhanjog Paswan, D/O- Yogendra Das, Resident of Village - Miraundha, P.S.- Sanokhar, District- Bhagalpur

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Ajay Mukherjee, Adv.
For the O.P.No.1	:	Mr. Ram Naresh Ray, APP
For the O.P.No.2	:	Mr.Ranjan Kumar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 18-07-2022 Heard Mr. Ajay Mukherjee, learned counsel for the petitioner and Mr. Ranjan Kumar Jha, learned counsel representing the opposite party no.2 as well as Mr. Ram Naresh Ray, learned APP for the State.

This revision application has been preferred for setting aside the order dated 24th Day of June, 2015 passed by the learned Principal Judge, Family Court, Bhagalpur in Miscellaneous (Maintenance) Case No.95 of 2012 by which the learned Principal Judge has been pleased to allow the application under Section 125 Cr.P.C. filed on behalf of the applicant-wife and directed the opposite party-husband to pay a sum of Rs.3000/- per month towards her monthly maintenance



and a sum of Rs.1500/- per month for her minor son.

A perusal of the impugned judgment would show that despite all steps taken in the learned court below the opposite party did not appear whereafter a substituted service was done by way of a paper publication of notice in the daily Hindi newspaper 'Prabhat Khabar' which is widely circulated in the area where the opposite party resides. Still the opposite party did not appear in the proceeding and the learned court had no option but to proceed with the matter ex-parte.

It further appears that the applicant-wife proved her case by examining herself as P.W.-1. She was supported by her father (P.W.-2). She proved the status of her husband and the salary being paid to him in the year 2013 and the same has been marked as Exhibit-1. Exhibit-2 is a certificate issued by the Mukhiya of Gram Panchayat Shankarpur Block Mehrama District-Godda by which it has been certified that Dhanyog Paswan son of Tarkeshwar Paswan has married to another lady namely Lalo Devi, daughter of late Ambika Paswan.

The learned Principal Judge, Family Court has considered the materials on the record and found that the applicant and her minor son were neglected by the petitioner. He has married to another lady and is residing with her since



August, 2011. Taking into consideration the amount of salary which the petitioner was getting in the year 2013, the court below has allowed 1/3rd of the said amount towards maintenance of the applicant-wife and her minor son.

This revision application has been preferred with a delay of four years and two months. Mr. Mukherjee, learned counsel for the petitioner submits that the 125 Cr.P.C. proceeding was conducted ex-parte and there being no adequate opportunity to the husband-petitioner to defend himself, the impugned judgment is liable to be set aside after condonation of delay in filing of the present revision application.

Mr. Mukherjee, however, does not dispute that the applicant-wife and her minor son are legally wedded wife of the petitioner and son respectively. It is also not disputed that the petitioner is a chowkidar and at the relevant time he was drawing a salary of about Rs.12,000/-.

Mr. Ranjan Kumar Jha, learned counsel for the opposite party no.2 has opposed this application. Attention of this Court has been drawn towards the observations of the learned Principal Judge recorded towards the end of the paragraph 2 of the impugned judgment where the learned court has discussed that the notices were issued to the opposite party



by both modes i.e. through process server as well as the registered post but the opposite party did not turn up. Lastly publication was made in the daily newspaper namely 'Prabhat Khabar' which is widely circulated in the locality where the opposite party is residing. Under these circumstances, the court had proceeded with the matter ex-parte and the case was fixed for ex-parte hearing on 02.04.2014.

Learned counsel submits that in this case on a bare perusal of the application seeking condonation of delay this Court will notice that there is no averment saying that no notice was served upon the petitioner. A completely vague kind of statement has been made in paragraph '7' saying that the petitioner had no knowledge about the impugned judgment. He nowhere says that he had no knowledge of the case or that he was never served.

Mr. Jha submits that a frivolous kind of application has been filed after more than four years just to avoid the payment of maintenance. Learned counsel submits that in this way the applicant-wife has not only been deprived of the paltry amount of maintenance which was awarded to her and her minor son, she has been further compelled to contest this matter in this Court.



It is his further submission that the present salary of the petitioner has gone up to Rs.30,000/- per month but he neglected his wife and minor child and is not paying a single farthing to the opposite party.

Having regard to the submissions noted hereinabove and the materials available on the record, this Court finds much substance in the submissions of learned counsel for the opposite party. This revision application has been filed after more than four years of passing of the impugned judgment. There is no averment at all in the petition seeking condonation of delay that the petitioner was not served with any notice of the case. There is no averment that he was not aware of the case. A vague statement has been made that he had no knowledge of the impugned judgment and, therefore, there is no willful delay or laches on the part of the petitioner. Apparently, the statements made in the petition seeking condonation of delay does not inspire confidence. The delay is inordinate and the conduct of the petitioner, who is a chowkidar, in not putting appearance before the court below further indicates that he was avoiding the proceeding.

Under these circumstances, in the opinion of this Court, the inordinate delay of more than four years is not fit to



be condoned. The prayer for condonation of delay is, thus, refused in the facts and circumstances of the case. As a result of dismissal of the petition seeking condonation of delay the revision application also fails.

The learned Principal Judge, Family Court, Bhagalpur shall ensure enforcement of the impugned judgment without further delay. In this connection, the Circle Officer, Mehrama, Godda, under whom the petitioner is working, is directed to cooperate with the learned court below in enforcement of the order, if required, by deducting the amount from the salary of the petitioner and remitting the same to the account of the opposite party.

In the facts of the present case this Court finds that the petitioner has not paid a single farthing to his wife and filed the revision application after more than four years and then revision application remained pending for another three years but during this period he has not given any help to his wife. The applicant-wife has been compelled to contest the matter for last 9 years, in such circumstance, this Court understands that the wife-opposite party has made out a case for award of some cost of litigation. This Court, therefore, directs the petitioner to pay a sum of Rs.25,000/- to the opposite party no.2 within a period of four weeks from today to meet her legal expenses.



Learned counsel for the petitioner has submitted that the petitioner wants to resolve the dispute through mediation. If it is so, it is open for him to file an appropriate application in the learned court below for sending the records to the mediation center to take steps for mediation but this will no way stop the recovery proceeding.

This application stands disposed of accordingly.

(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'.

