

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.632 of 2018

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

Md. Mehrab, S/o Hafiz Belal, R/o Vill.- Laxmipur Purandaha, P.S.- Simraha,
District- Araria. Petitioner

Versus

1. The State of Bihar
 2. Tabasun Khatoon @ Bibi Tabasum, W/o Md. Mehrab, D/o Md. Farooque,
 3. Saba Anjum age 6 Years,
 4. Rizwana Tabasum, age 4 Years Opposite Party Nos. 3 and 4 are D/o Md. Mehrab under the care and guardianship of their mother Tabasum Thatoon All R/o Vill.- Laxmipur Purandaha, P.S.- Simraha, District- Araria.
- Respondents

Appearance :

For the Petitioner/s : Mr. Anamul Haque, Advocate
For the Opposite parties : Mr. Ramesh Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 18-08-2022 Heard learned counsel for the petitioner and Mr. Ramesh Kumar Singh, learned counsel for the opposite parties.

Petitioner in this case is aggrieved by and dissatisfied with the order dated 13.04.2018 passed by the learned Principal Judge, Family Court, Araria in Maintenance Case No. 309 of 2017 by which the petitioner has been directed to pay maintenance amount of Rs. 3000/- to O.P. No. 2 and Rs. 1000/- each to O.P. Nos. 3 and 4.

On 01.07.2022, in course of hearing of this application attention of this Court was drawn towards the statements made in paragraph '9' of the petition. This Court recorded the following order:-

“Keeping in view the specific statements made in paragraph '9' of the petition that the petitioner shall return all the articles which has been



provided to him by way of gift and also the entire expenses of Iddat period as well as 63 decimal of land to the O.P. No. 2 and will also meet the entire expenses on account of marriage of his own daughters, Mr. Ramesh Kumar Singh, learned counsel for O.P. No. 2 prays for seeking instruction as to whether a mediation is possible between the parties at this stage.

Let it be recorded that Mr. Anamul Haque, learned counsel for the petitioner has impressed upon this Court that the petitioner is ready and willing to abide by the statements made in paragraph '9' of the petition.

List this case on 18th July, 2022 under the same heading maintaining its position.”

On the next date i.e. 20.07.2022, learned counsel for the petitioner changed his stand and this Court recorded the following order:-

“Today, learned counsel for the petitioner has taken a complete U-turn. He has submitted that his statement in paragraph '9' which was pressed before this Court on the previous date of hearing is containing some typographical errors.

Learned counsel submits that Annexure '3' to the application would show that the amount on account of Mehar and expenses of Iddat are in lieu of the gifts which the wife of the petitioner had received.

Learned counsel for the opposite party has opposed this submission of learned counsel for the petitioner. It is submitted that the amount of Mehar is a part of the contract recorded in the Nikahnama and the petitioner is liable to pay the expenses of Iddat period under the Muslim Law. It is submitted that by no stretch of imagination the value of the gift of the wife may be allowed to



be adjusted against the Mehar and the expenses on account of Iddat.

Under the circumstances stated above, this Court has heard learned counsel for the parties on merit. Learned counsel for the petitioner has assailed the impugned order on the ground that it is an ex parte order and no notice was served upon him. It is further submitted that he is a worker engaged in doing labour work in the State of Rajasthan.

On the other hand, learned counsel for the opposite party no. 2 submits that notice was issued to the husband- opposite party in the court below both by ordinary process as well as by registered post but he did not appear. It is submitted that the petitioner is working in a private company and has got an income of Rs. 26,000/- per month. He has solemnized another marriage whereas he is neglecting the opposite party no.2-wife and the two minor children. It is submitted that the petitioner is not paying any money to the opposite parties since long and at no stage the order of the learned court below has been complied with.

As this Court called upon learned counsel for the petitioner to seek instruction as to whether the petitioner is ready to show his bona fide, he submits that he will seek instruction.

Let this matter be listed after three weeks i.e. on 18th of August, 2022 to enable learned counsel for the petitioner to seek instruction from his client. In the meantime, the petitioner must pay at least a sum of Rs. 4,000/- per month till further hearing of this case to the opposite parties.

Call for a report from the learned Principal Judge, Family Court, Araria relating to Maintenance Case No. 309 of 2017 specifically on the point as to whether the notice issued to the opposite party-husband as stated in paragraph '3' of the impugned order was duly served upon him and the service report of notice is available on the record.

Let such a report be also obtained within two weeks.

List accordingly.”



Pursuant to the last order dated 20.07.2022, a report has been received from the learned Principal Judge, Family Court, Araria vide letter no. 195/2022 dated 2nd August, 2022. The relevant part of the report are being reproduced hereunder:-

“ It is further humbly submitted that from perusal of the record of Maintenance Case No. 309/2017 it appears that summon was issued upon the O.P. Md. Mehrab on 21.11.2017 and the service report of the same was attached with the record on 15.12.2017. Thereafter, registered card was issued upon him on 19.12.2017 and the service report of the same was attached with the record on 03.01.2018.

The service reports are available on record. From perusal of the service report of the summon dated 02.12.2017 of the process server, it appears that the O.P. refuse to received the summon and also refused to give his receiving, consequently, the copy of the summon was affixed on the exit door of his house and the boundary of his house was prepared and L.T.I. of one witness Md. Sams Kamar was taken by him.

The registered card was issued upon the O.P. on 19.12.2017 and the same was returned unserved on 03.01.2018 with this marginal note that ‘This person is in Bangalore’.

This court vide the order dated 01.02.2018 ordered for initiation of Ex-parte proceeding with this observation that ‘the O.P. has not appeared even after issuance of summon and registered summon. There seems no probability of his appearance’.”

When this Court called upon learned counsel for the petitioner to inform as to whether the petitioner is paying at least a sum of Rs. 4,000/- per month in terms of the order dated 20.07.2022 passed by this Court, learned counsel for the



petitioner submits that the petitioner has not paid any amount. The only ground raised before this Court is that it is an ex-parte judgment. There is no denial of the fact that the opposite party no. 2 is the wife of the petitioner and opposite party nos. 3 and 4 are his minor daughters.

Learned counsel for the opposite parties has submitted that the conduct of the petitioner may be seen from the observations of this Court recorded in its order dated 01.07.2022 itself. It is submitted that the learned court below has awarded a meager amount of Rs. 3,000/- to the applicant-wife and Rs. 1000/- to each of the minor daughters but the petitioner is not ready to pay even this meager amount. He has performed another marriage and is living happily with his second marriage.

Having regard to the facts and circumstances of the case, the materials available on the record showing the admitted position that the applicant-wife and the two minor daughters are unable to sustain themselves in want of any independent income and at the same time the petitioner is avoiding his responsibility to take care of his wife and minor daughters, this Court finds no reason to interfere with the meager amount of Rs. 3,000/- and Rs. 1,000/- respectively allowed to the applicant- wife and each of the minor daughters.



Since the petitioner is not paying any money to the opposite party nos. 2 to 4, the learned Principal Judge, Family Court, Araria shall take appropriate steps as expeditiously as possible to enforce the impugned judgment.

This Court has been informed by learned counsel for the opposite party nos. 2 to 4 that the petitioner is absconding in Complaint Case No. 2296C of 2017 presently pending in the court of learned Chief Judicial Magistrate, Araria. It is submitted that warrant of arrest has been issued against the petitioner but the same is not being executed by the enforcement agency. Let this be brought to the notice of the Superintendent of Police, Araria and in case it is found that the petitioner is absconding and there is a warrant of arrest against him, the Superintendent of Police, Araria shall ensure execution of the warrant against the petitioner and submit a report to this Court within a period of four weeks from today. If such a report is filed the same will be placed before this Court for perusal. Non-compliance with this part of the order shall also be brought to the notice of this Court.

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'.

