

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.70 of 2023

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

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Rakesh Kumar @ Rakesh Bhushan Singh S/O Late Kamta Singh R/O Village-
Hansapur, P.S.- Dhanarua, Distt- Patna.

... .. Petitioner/S

Versus

1. The State Of Bihar.
2. Smt. Asha Kumari @ Asha Devi D/O Ram Bhajan Singh, W/O Rakesh Kumar @ Rakesh Bhushan Singh R/O Village- Hansapur, P.S.- Dhanarua, Distt- Patna, At Present Resident Of Sampat Chak Bazar, Sohagi More, P.S.- Sampatchak, Distt- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D. K. Sinha, Sr. Adv.
	:	Mr. Alexander Ashok, Adv.
For the Respondent/s	:	Mr. Jagdhar Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

4 10-04-2023 Heard learned counsel for the petitioner and learned
counsel for the State.

The present Cr. Revision application has been filed to set-aside the order dated 21.06.2022 passed in Cr. Misc. No. 108/2019 by Principal Judge, Family Court, Patna, by which the Cr. Misc. application filed under Section 126(2) of the Cr.P.C. for recall of ex-parte order dated 01.11.2018, passed by Principal Judge, Family Court, Patna in maintenance Case No. 182(M)/2017 passing ex-parte order allowing maintenance to pay Rs. 4,000/-, has been challenged.

Counsel for the petitioner submits that during the

pendency of this application, one limitation petition bearing I.A. No. 1 of 2023 has also been filed for condonation of delay of about 200 days in filing of this application by which maintenance case has been allowed on 01.11.2018. The cause of delay in filing is already mentioned in paragraph no. 2, 3 and 4 of the petition, on the ground that the conducting counsel died in the month of April 2022 due to this reason the delay has been caused, in this view of the matter, the said I.A. No. 1 of 2023 is allowed and delay in filing in the case is hereby condoned.

Counsel for the petitioner submits that there are two orders in the said case, which are under challenge. The first order is passed on 01.11.2018, by which amount of maintenance of Rs. 4,000/- per month was directed to be paid to the petitioner, under Section 125 of the Cr.P.C. and the second order i.e. order dated 21.06.2022, which has been filed for setting aside the order dated 01.11.2018 was challenged, has been dismissed.

Counsel for the petitioner submits that on record counsel Mr. Ashok Kumar Singh of the petitioner died, in the month of April 2022 and it is due to this reason only, the previous order of the Court has not been complied.

Counsel for the State submits that the ground taken by

the counsel for the petitioner is not correct. He submits that from the record it transpires that in Cr. Misc. No. 108 of 2019, the Court directed the petitioner to file a reply, in the light of application filed by the O.P. on 13.01.2020. The Court has demanded the reply to be filed vide order dated 11.02.2020 and case was fixed for hearing on 13.03.2020 and after 2 years, when order was not complied, this case was dismissed, therefore, this Court finds that the final order has been passed on 21.06.2022, but in the meantime the counsel for the petitioner died on April 2022 itself, as such the order dated 21.06.2022 is hereby set-aside and for this purpose, the petitioner is directed to defend Cr. Misc. No. 108 of 2019.

So far as, challenge of order dated 01.11.2018 is concerned, it is crystal clear from the order-sheet itself that after admission notice was sent to O.P. (present petitioner) *nazarat* as well as registered post, thereafter, paper publication of the notice was made in daily newspaper but O. P. failed to appear in this case and after finding the service of notice upon the O.P. (present petitioner), the case was fixed for ex-parte hearing vide order dated 17.03.2018 and thereafter, examining the two witnesses, this Court reached at the finding and directed the petitioner to pay Rs. 4,000/- per month.

This Court found that there is no illegality in the said order, therefore, this Court is not inclined to interfere with the said order.

The petitioner is directed to make payment of Rs. 4,000/- per month to the petitioner (O.P. No.2) and Principal Judge Family Court is directed to the needful for the payment of the said amount. If the said amount not paid within 30 days then Principal Judge, Family Court is free to issue process under Form 18/19 of the Cr.P.C., 1973.

With this direction this Cr. Revision is partly allowed and partly dismissed.

(Dr. Anshuman, J.)

Ashishsingh/-

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