

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1039 of 2017

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

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Kalimullah Khan S/o Late Abdullah Khan, R/o Village- Nizampur, P.O. Rampur, P.S.- Majaharulhak Nagar, District- Siwan, at present Naya Qila Nawalpur Ward No.27, P.O.,P.S. and District- Siwan. Petitioner/s

Versus

1. State Of Bihar
2. Ishrat Hasmi, W/o of Kalimullah Khan, D/o Late Sayeed Ahmad, R/o Village- Nizampur, P.O.- Rampur, P.S.- Majaharulhak Nagar, District- at present residing at Village and P.O. Maksuda, P.S.- Sakari, District- Madhubani. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ramadhar Shekhar, Adv.
For the Respondent/s : Mr. Navin Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

6 06-07-2023 Heard the parties.

2. The present revision application has been filed against an *ex parte* order dated 29.09.2016 passed in M.R. Case No. 398/2014 by Principal Judge, Family Court, Madhubani whereby and whereunder the petitioner has been directed to pay the amount of maintenance of Rs. 8000/- per month to OP No.2 under section 125 of the CrPC and in case of non compliance, the amount of maintenance will be deducted from the pension of the petitioner.

3. Learned counsel for the petitioner submits that the order impugned has been passed behind the back of the petitioner inasmuch as no notice was served to the petitioner and the same is an *ex parte* order.

4. Section 126(2) of the CrPC is quoted hereinbelow:-

“All evidence in such proceedings shall be



taken in the presence of the person against whom an order for payment of maintenance is proceed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons- cases:

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms at to payment of costs to the opposite party as the Magistrate may think just and proper.”

5. In view of the aforesaid legal provisions, the present application stands dismissed with liberty to the petitioner to approach the Family Court by filing a petition afresh.

6. It is made clear that if any petition is filed for recalling/setting aside the order impugned along with condonation of delay petition, the same may be considered by the learned Family Court in accordance with law.

(Anil Kumar Sinha, J)

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