

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.741 of 2018

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

Samresh Singh Son of Ram Bachan Singh, Resident of Village- Tara Nagar,
Bansidih P.S. Chas District- Bokaro Jharkhand.

... .. Petitioner/s

Versus

The State Of Bihar and Ors

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ramashish, Advocate

For the Respondent/s : Sri Rajendra Singh Shastriji, Add. P.P. PHC

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 13-12-2023 An ex parte order dated 6.4.2018 in Miscellaneous
Case No.19 of 2017 under Section 125 of the Cr.P.C., passed by
the learned Principal Judge, Family Court at Gaya is under
challenge in the instant Revision.

2. It is the case of the petitioner/husband that the
petitioner did not receive any notice of the proceeding under
Section 125 of the Cr.P.C. before its *ex parte* disposal, therefore,
he did not get an opportunity to contest the aforesaid case.

3. Since a proceeding under Section 125 of the
Cr.P.C. is possessive in nature, an ex parte order of maintenance
can be vacated for non-service of summons by the Trial Court
itself. The Revisional Court is not in a position to go through the
lower court record to ascertain as to whether notice was served
upon the petitioner or not.



4. In view of such circumstances, the instant Criminal Revision is disposed of permitting the petitioner to make an appropriate application before the Trial Court for vacating the ex parte order for non-service of notice upon him. The learned Trial Judge shall dispose of the petition on perusal of the lower court record and the service report of the notice. It is clearly observed that since this court directs the petitioner to file appropriate application for vacating the ex parte order. The learned Trial Judge shall not insist upon the issue of limitation at the time of hearing of the above mentioned petition.

5. With the above order, the instance Revision is disposed of.

(Bibek Chaudhuri, J)

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