

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1422 of 2019

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

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Md. Israt @ Md. Ishrat Ali Son of Md. Shaukat Ali Resident of Village -
Awapur, P.S.- Pupri, Distt.- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Rabbana Khatoon W/o Md. Ishrat Ali, D/o Abdus Samad Presently staying
with her father Abdus Samad @ Abdul Samad at Resident of Village -
Betaha, P.S.- Bela, Distt.- Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashhar Mustafa, Adv.
For the Respondent/s	:	Mr. Ajay Kumar No.2. Adv.
For the O.P/s	:	Mr. Santosh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 18-04-2023

Learned counsel for the petitioner, counsel for the
State and counsel for O.P. present.

The present criminal revision application has been
filed against the order dated 16.10.2019 passed in Misc. Case
No. 16 of 2017 allowing the application filed by the petitioner
on 03.03.2017 under Section 126(2) of Cr.P.C. for setting aside
ex-parte order of maintenance dated 18.01.2017 passed in
Maintenance Case No. 129 of 2015 subjected to payment of a
consolidated sum of Rs.2,50,000/- to O.P. No.2 within a month
as arrears of maintenance for the period starting from
14.08.2015 to 16.10.2019 as well as Rs.5,000/- per month.

Counsel for petitioner submits that it is an order which has been passed in violation of conditions laid down under Section 126(2) of the Cr.P.C. where ex-parte order has been set aside on the one hand and on the other, the condition has been made to pay Rs.2,50,000/- as well as Rs.5,000/- per month.

Counsel for petitioner further submits that passing such order by the Court in which payment of arrears of last 15 months even after ex-parte order is not in accordance with law. Therefore, this part which is mentioned in Paragraph 10 should be set aside.

Counsel for petitioner has annexed documents by which he is placing before this Court for the petitioner that he is ill and his physical condition is deteriorating day by day. By the grace of god and with the help of mother and father, he is anyhow surviving.

Counsel for State submits that it is well within the power of the Court to pass such order as provision of Section 126(2) of Cr.P.C. is clear.

Counsel for O.P. No.2 submits that in the original ex-parte order, the payment of Rs.13,000/- per month was directed. Such payment has directed to be made against the

petitioner after paper publication and holding that valid service has been made against the petitioner. The liberty was granted to the petitioner to hear setting aside the ex-parte order is very categorical and well within Section 126(2) of Cr.P.C. He submits that the order may not be set aside as mentioned in Paragraph 10 of the impugned judgment.

Upon going through the documents and hearing the parties, this Court is of the view that the question of legality and propriety has not been raised, only question of correctness has been raised by the counsel for petitioner under Section 126(2) of Cr.P.C. This Court is of the view that there are two terms inserted in Section 126(2) of Cr.P.C.. One is the cost and another is condition and the condition imposed in this section comes in purview of that and therefore, this Court is of the view that there is no need of any interference, as this order is correct and passed in accordance with law.

But considering the physical condition that petitioner is ill, this Court has put a question to the counsel for O.P. No.2 that petitioner is continuously paying Rs.5,000/- per month since September 2022 to O.P. No.2, but whether O.P. No.2 is ready to receive Rs.2,50,000/- in installments, on which O.P. No.2 has given her consent.

This Court directs the petitioner to pay Rs.2,50,000/- in five easy installments in every three months from the date of order passed in the present case.

In this view of the matter, this criminal revision petition is disposed of without changing the basic structure of the order and only modified the order relating to mode of payment mentioned in this order.

In case, the party shall fail to pay and fulfill the condition imposed upon him, as mentioned in the present order, the Principal Judge, Family Court shall be at liberty to take action for the realisation of money by virtue of issuing processes under Form 18 & 19 of Schedule II of Cr.P.C., 1973 after 30 days from the date of failure of such payment.

With this direction, this Cr. Revision Application is hereby disposed of.

(Dr. Anshuman, J.)

prakashmani/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	