

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.151 of 2019

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

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Rashid Imam Khan @ Md. Rashid Imam Khan Alamgir Khan Resident of
Village- Bantara, P.S.- Deo Kund, District - Aurangabad

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ashraf Perween Rashid Imam Khan Resident of Village- Bantara, P.S.-Deo Kund, District - Aurangabad
3. Mehenoor Imam @ Naureen Imam Rashid Imam Khan Resident of Village- Bantara, P.S.-Deo Kund, District - Aurangabad
4. Nausheen Imam Rashid Imam Khan Resident of Village- Bantara, P.S.-Deo Kund, District - Aurangabad

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shakil Ahmad Khan, Advocate
For the Respondent/s : Mr. Ramchandra Sahni, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

8 01-04-2024 Heard learned advocate for the petitioner and learned
Additional Public Prosecutor for the State.

2. The instant revision is directed against an ex-parte order dated 09.10.2018 passed in Miscellaneous Case No.158 of 2016 by the learned Principal Judge, Family Court, Gaya in a proceeding under Section 127 of the Cr.P.C. filed by the opposite party no.2 herein.

3. The learned Principal Judge, Family Court, Gaya vide order dated 09.10.2018 directed the present petitioner/ husband to pay maintenance allowance at the enhance rate of



Rs.15,000/- in place of Rs.5,000/- in favour of the opposite party no.2 from the month of October, 2018.

4. It is submitted by the learned advocate for the petitioner/husband that the impugned order ought to be set aside because of the fact that the petitioner did not receive any notice prior to the hearing of the application under Section 127 of the Cr.P.C. The submission made by the learned advocate for the petitioner does not support the observation made by the learned Principal Judge on the issue of service of notice because in Para-3 of the impugned judgment it is recorded by the learned Principal Judge :-

“3. The notice was issued against the opposite party. The opposite party did not appear in this case after service of notice and my predecessor-in-court ordered ex parte hearing vide order dated 17.06.2017.”

5. However, without delving out the question as to whether notice upon the opposite party was served or not, the petitioner herein has filed a certificate issued by the Block Education Officer, Rafiganj that the opposite party no.2 is a teacher of Rajkiya Mahavidyalaya, Belthua Block, Rafiganj and in the year 2017 her monthly income was Rs.14118/-. This certificate was not produced before the learned Principal Judge



for consideration of the question regarding enhancement of maintenance allowance. Had the document been placed before the learned Principal Judge, the impugned order could have been otherwise.

6. In view of what has been stated above, I am inclined to quash and set aside the order passed in the proceeding under Section 127 of the Cr.P.C. in Misc. Case No.158 of 2018 on 09.10.2018.

7. The learned Principal Judge, Family Court, Gaya is directed to consider Annexure-2 of the instant revision and after giving opportunity to both the parties to leave evidence with regard to their respective income and present need. The learned Principal Judge is directed to pass a fresh judgment within three months from the date of communication of this order.

8. It is made clear that no fresh notice will be issued to the petitioner in connection with re-hearing of Misc. Case No. 158 of 2016. The petitioner is directed to appear before the Trial Court with the server copy of the order and proper application for re-hearing of Misc. Case No.158 of 2016 within a fortnight.

9. The learned Trial Judge is directed to issue notice to the opposite party no.2 and re-hear the matter afresh and pass a reasoned judgment on the basis of the documents which will



be filed by the parties.

10. The instant revision is accordingly, disposed of.

(Bibek Chaudhuri, J)

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