

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.234 of 2019

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

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Budhdeo Kumar Sinha Son of Late Mani Bhushan Sinha Resident of Village - Bhuriya, P.O. and PS- Sanhoula At present resident of Regionla Office No. 3 , Town Centre, Tower-1, 6th Floor, Andheri Kurla Road, Marol, Andheri (East), Mumbai - 400059

... .. Petitioner/s

Versus

MICKY SINHA @ APEKSHA SINHA Daughter of Sri Mrityunjay Kumar Ghosh Resident of Village - Jagatpur, PO & P.S.-Banka, District- Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abinash Kumar, Advocate
For the Respondent/s : Mr. Sanjay Kumar Jha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 25-01-2024 Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

2. The instant revision is directed against an ex-parte order dated 22.02.2016 passed by learned Principal Judge, Family Court, Banka in Maintenance Case No.73 of 2008. By passing the impugned order the Court below granted maintenance allowance at the rate of Rs.20,000/- per month in favour of the opposite party.

3. The learned advocate for the petitioner has prayed for setting aside the said order on the ground that the impugned order was passed without service of notice upon the present petitioner/husband. Learned advocate for the petitioner further



submits that in para-3 of the impugned order it is recorded by the learned Principal Judge that in order to ensure attendance of the opposite party/petitioner herein summon was issued but he did not appear, therefore, on 29.06.2009 the maintenance case was fixed on ex-parte Board.

4. The learned advocate for the petitioner has shown the certified copy of the order dated 29.06.2009 on perusal of which it appears that the learned advocate on behalf of the petitioner in Trial Court filed an application stating inter-alia that notice of the maintenance case was sent to the opposite party/petitioner herein, under registered post with A/D. However, there is no record that A/D cover was received and filed in the Court showing service of notice upon the opposite party.

5. Therefore, the learned advocate for the petitioner submits that the impugned order was passed without service of notice to the opposite party and accordingly, the impugned order cannot stand.

6. Learned advocate for the opposite party/wife, on the other hand submits that the opposite party is the legally married wife of the petitioner. After few days of marriage, she left from her matrimonial home and since then she is residing at



her paternal home with his son. She is not being maintained by the petitioner. The petitioner has not produced any document to show that during her stay at her paternal home he sent some money to the opposite party for her maintenance. The conduct of the petitioner clearly shows that he is not willing to maintained the opposite party. Under such circumstance, there is no necessity to set aside the ex-parte order for alleged non service of summons.

7. It is needless to say that an application under Section 5 of the Limitation Act can be heard ex-parte only after service of notice upon the husband against whom maintenance allowance was prayed by the wife. In the instant case, it is found that notice was sent by registered post to the opposite party but there is no record that it was actually served upon him.

8. In view of such circumstance, I am not in a position to refuse the prayer made by the petitioner in the instant revision. Therefore, since the ex-parte order of maintenance being Maintenance Case No.73 of 2008 was passed without considering the fact as to whether notice was served upon the husband or not, the impugned order is set aside. Since, the opposite party has entered appearance in this proceeding, it is directed that no notice shall be served a fresh to the petitioner of



the proceeding under Section 125 of the Cr.P.C. in Maintenance Case No.73 of 2008. The petitioner is directed to appear with the server copy of the order in the Trial Court within 15 days from the date of this order.

9. The learned Trial Judge shall give him liberty to file written statement within 30 days thereafter, and allow the parties to adduced evidence and passed fresh order of maintenance on the basis of the evidence on record within six months from the date of communication of this order. The time limit fixed by this Court is peremptorily and the learned Trial Judge shall comply with the time limit strictly and diligently.

10. Without prejudice to the rights and contentions of the parties, the petitioner is directed to deposit/pay a sum of Rs.20,000/- per month to the opposite party till the disposal of the maintenance case being Maintenance Case No.73 of 2008.

11. Accordingly, the instant revision application stands allowed.

(Bibek Chaudhuri, J)

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