

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL REVISION No.413 of 2019**

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

=====

Vikash Kumar @ Vishal Kumar Roy Son of Sri Bodh Narayan Ray Resident  
of Village- Hania Khuthari, P.S.- Sikti, District- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Gaumati Devi, Wife of Shri Vikash Kumar @ Vishal Kumar Rai and  
Daughter of Shri Naresh Kumar Rai, Resident of Village- Hania Kuthari,  
P.S.- Sikti, District- Araria.

... .. Respondent/s

=====

**Appearance :**

|                      |   |                                                                                             |
|----------------------|---|---------------------------------------------------------------------------------------------|
| For the Petitioner/s | : | Ms. Siddhi Aashana, Advocate<br>Mr. Kumar Ravish, Advocate<br>Mr. Kashyap Kaushal, Advocate |
| For the Respondent/s | : | Mr. Navin Kumar Pandey, APP                                                                 |

=====

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**  
**ORAL ORDER**

- 2      10-04-2024                      The instant revision is directed against an order dated 08<sup>th</sup> June 2018 passed by the Learned Principal Judge, Family Court, Araria in Maintenance Case No. 311/2017 directing the petitioner herein to pay maintenance at the rate of Rs. 7000/- per month in favor of the opposite party. It is submitted by the petitioner that the impugned order dated 08<sup>th</sup> June 2018 was passed behind the back of petitioner, as he did not receive any notice of the said proceeding before passing of the order dated 08<sup>th</sup> June 2018. It is also stated by the petitioner that he works as a labourer in Delhi and it is not financially possible for him to pay maintenance at the rate of Rs. 7000/- per



month.

2. This Court has considered the submission made by the Learned Advocate on behalf of the petitioner though, it is contended by the Learned Advocate for the petitioner that no notice was served upon the opposite party. The trial court recorded in paragraph 3 of the order that in spite of issuance of notice as well as registered notice, the opposite party did not appear before the court. Therefore, he heard the petition under Section 125 of the CrPC registered as Maintenance Case No. 311/2017 *ex parte*.

3. This Court would not have quashed and set aside the impugned order on the ground of none service of notice, especially when the learned trial Judge recorded that the notice was issued on the opposite party but he had chosen not to appear before the trial court, but for the amount of maintenance awarded in favor of the opposite party.

4. It is submitted by the learned advocate for the petitioner/husband that he works as a mere daily labourer in Delhi and he does not have the financial capacity to earn rs. 40,000/- per month as alleged by the opposite party in the trial court and he has no financial capacity to pay Rs. 7000/- per month.



5. Therefore, while quashing the impugned order this Court remits that Maintenance Case No. 311/2017 directing the learned trial Judge to assess the income of the petitioner, on the basis of evidence that may be adduced by him. If required, the learned trial Judge can obtain an affidavit of assets and liabilities from the petitioner. In compliance of the guideline made by the Hon'ble Supreme Court in ***Rajnesh v. Neha***, reported in ***(2021) 2 SCC 324***.

6. For the reason stated above, the impugned order 08<sup>th</sup> June 2018 is quashed and set aside. However, the petitioner/husband is directed to pay/deposit Rs.4000/- per month towards an interim maintenance in favor of the opposite party from the date of this order by 10<sup>th</sup> of each succeeding month. The learned trial Judge is directed to dispose of the maintenance case within three months from the date of this order. It is made clear that no fresh notice will be served upon the petitioner herein and the petitioner shall appear before the court with the server copy of this order within 15 days from the date of this order. Thereafter, the petitioner will remain present on each date of trial of the Maintenance Case No. 311/2017.

7. Since, the instant revision is disposed of in the absence of the opposite party/wife, the learned trial judge is



directed to issue notice upon the opposite party before commencement of hearing of Maintenance Case No. 311/2017.

8. The instant revision is thus disposed of.

**(Bibek Chaudhuri, J)**

Suraj/Vinayak-

|   |  |   |  |
|---|--|---|--|
| U |  | T |  |
|---|--|---|--|

