

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.323 of 2022

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

MD. FIROZUDDIN Son of Late Md. Sarfuddin Resident of Dr. Zakir Hussain Road, Hazaribag, P.S.- Sadar, District - Hazaribag (Jharkhand)

... .. Petitioner/s

Versus

1. The State of Bihar
2. Md. Anas Son of Md. Firozuddin Under guardianship of Md. Mohajir Hassan, Son of Late Md. Yasin, Resident of Purab Sarai, Azad Colony, P.S.- Kotwali, District - Munger

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Shitanshu Shekhar Mishra
For the Respondent/s	:	Mr.Narendra Kumar Singh

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

9 13-02-2024 The instant Revision is directed against an order dated 23rd December, 2021 passed by the learned Principal Judge, Family Court at Munger in a petition under Section 125 of the Code of Criminal Procedure by filing of which, the maternal grand father had sort for maintenance against the opposite party for his disabled manner son.

Indisputably, opposite party no.2 is the minor disabled son of the petitioner who filed the application through his maternal grand father. Date of birth of the said mentally challenged child is on 15th April, 2014.

It is submitted by the learned Advocate for the petitioner that the wife of the petitioner had make with an



unnatural death on 10th July, 2017. On the basis of an F.I.R. lodged on a complaint filed by the father of the wife of the petitioner, he was implicated in a criminal case under Section 306 of the Indian Penal Code. During investigation, he was taken into custody. However, Annexure-1 of the instant Revision shows that he was acquitted of the charge under Section 306 of the Indian Penal Code and all other penal provisions. It is also the case of the petitioner that during the period when the petitioner was in custody, the father-in-law of the petitioner surreptitiously took away the said child to his place. The petitioner first requested his father-in-law to handover the child which was denied by him. Subsequently, he filed an application under the Guardians and Wards Act for custody of the said child being the lawful guardian. However, on the basis of some amicable arrangement, the said application was disposed of as withdrawn. Thereafter, in Maintenance Case No. 17 of 2019, the petitioner was directed to pay maintenance at the rate of Rs. 10,000/- per month for his minor child. The said order is assailed by the petitioner on the ground that he wants to keep his son in his custody.

This court is inclined to record at the outset that a proceeding under Section 125 of the Cr.P.C. is not a proceeding



of delivery of custody of a minor child to the petitioner being the lawful guardian of the said child.

The fact remains that the said child is an under the custody of his father-in-law. It appears from the record that during 2018, the petitioner paid a sum of Rs. 5,000/- per month for the maintenance of the said child. However, subsequent document showing payment has not been filed by the petitioner.

It is submitted by the learned Advocate for the opposite party that the petitioner runs a shop of selling shoes in Hazaribagh and he earns approximately Rs. 50,000/- per month from 2019 to till this date. During the pendency of Maintenance Case No. 17 of 2019 and the instant Revision, the petitioner in all paid Rs. 50,000/- in lump sum in one occasion and Rs. 25,000/- by money order while a some of Rs. 5 lakh approximately is due towards maintenance of the child.

Having heard the learned counsels for the parties and on perusal of the entire materials on record, this court recourse the misfortune of a mentally disabled child who has lost his mother during his tender age. The father and the maternal grand father are engaged in filing litigations for maintenance and custody of the child.

It is needless to say that a mentally disabled child



not only needs maintenance for his sustenance but requires money for his medical expenses and mental well-being.

Considering such aspect of the matter and in view of the fact that the petitioner has not specifically denied his income, this court finds that no material irregularity or jurisdictional error have been committed by the learned Principal Judge, Family Court at Munger in directing the petitioner to pay maintenance at the rate of Rs. 10,000/- per month. Thus, I do not find any merit in the instant Revision and accordingly, the same is dismissed.

The petitioner is at liberty to take necessary steps for obtaining custody of the child under the appropriate Act.

(Bibek Chaudhuri, J)

Guddu/-

U		T	
---	--	---	--

