

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1158 of 2017

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

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ZUBAIR ALAM @ MD. ZOBAIR ALAM Son of Md. Moin, resident of Mohalla- Azaji Marg, Tilak Maidan, P.S.- Nagar Muzaffarpur, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Shahin Bano, Wife of Zubair Alam, Resident of Mohalla Azaji Marg, Tilak Maidan, Muzaffarpur at present Mohalla Purani Gudari, P.O. and P.S.- Bettiah, District- West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Yugal Kishore, Adv.
For the Respondent/s : Mr. Ramchandra Sahani, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 29-01-2024

Heard learned Advocate for the petitioner as well as learned APP for the State.

2. The instant revision is directed against an order dated 18th October, 2017, passed by the learned Principal Judge, Family Court, West Champaran, Bettiah in Cr. Misc. No. 08 of 2016.

3. Before dealing with the impugned order, let me state the brief facts of the case. Admittedly, the opposite party no. 2 filed a Maintenance Case against the petitioner, which was registered as Maintenance Case No. 185(M) of 2008. The said Maintenance Case was allowed ex parte directing the opposite



party/husband to pay maintenance allowance @ Rs.4,000/- per month. As the petitioner failed to pay maintenance allowance. Distress warrant was issued against the petitioner. Subsequently, the petitioner filed Criminal Revision No. 726 of 2012 before this Court challenging the ex parte order, passed on 14th July, 2011. In Cr. Revision No. 726 of 2012 (**Zubair Alam Vrs. The State of Bihar & Anr.**) a Coordinate Bench of this Court while disposing of the revision vide order dated 25th February, 2014, permitted the petitioner to file an application under Section 126 (2) of the Cr.P.C. setting aside the ex-pate order. In the last paragraph of the order, it is stated by the Coordinate Bench of this Court which is as follows:-

“Needless to add that any such application being filed by the petitioner within four weeks from today, if accompanied with a petition for condonation of delay, would be considered by the Court below and disposed of in accordance with law after hearing the contesting parties, taking into consideration the pendency of the matter before this Court.”

4. The petitioner did not file an application under Section 126 (2) of the Cr.P.C. within the period as directed by this Court, in Criminal Revision on 25th February, 2014. By passing the



impugned order, the learned trial Judge rejected the application under Section 126(2) of the Cr.P.C. on the ground that the petition under Section 126 (2) of the Cr.P.C. was not filed within the stipulated time as mentioned by this Court.

5. I have already recorded the order of this Court dated 25th February, 2014. This Court directed the petitioner to file a petition within four weeks from the date and also directed the trial court to dispose of the case in accordance with law. On perusal of the impugned order, I find, though the petitioner filed the petition within four weeks from the date, but the trial court dismissed the same on the ground of great delay.

6. The learned Advocate for the opposite party no. 2 admits that the application under Section 126(2) of the Cr.P.C. and the application under Section 5 of the Limitation Act was filed within the time as directed by this Court.

7. In view of such position, the impugned order cannot be sustained. Therefore, the impugned order dated 18th October, 2017 is set aside.

8. The trial court is directed to re-hear the petition filed by the petitioner on 14th March, 2014 and dispose of the same within two months from the date of communication of this order.



9. In the meantime, as the petitioner has not paid any amount towards maintenance of the wife, he is directed to deposit Rs. 50,000/- (Fifty thousands) lump sum on the first date of appearance of the parties, in the name of the opposite party no.2. He is also directed, without prejudice to his rights and contention to go on paying a sum of Rs. 3,000/- per month to the petitioner till the disposal of Misc. Case No. 08 of 2016.

10. The instant revision is thus allowed on contest.

(Bibek Chaudhuri, J)

pravinkumar/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

