

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1355 of 2018

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

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Dilip Singh @ Jugunu Singh @ Veerbahadur Dhirendrapratap Singh @ Veer Singh @ Virbahadur Singh, Son of Dhirendra Pratap Singh, Resident of Village- Kachhawan, P.S.- Kerakat, District- Jounpur (U.P.).

... .. Petitioner/s

Versus

Sarita Devi, Wife of Dilip Singh, Resident of Village- Kachhawan, P.S.- Kerakat, District- Jounpur (U.P.). At present residing at Village- Hadiyabad, P.S.- Aayar, District- Bhojpur at Ara.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rama Kant Singh
For the Respondent/s	:	Mr. Madan Jeet Kumar

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

- 7 16-01-2024 1. An *ex-parte* order of maintenance in proceeding under Section 125 of the Cr.P.C., filed by the Opposite Party No. 2, before the learned Principal Judge, Bhojpur at Ara in the district of Bhojpur, being Maintenance Case No. 46 of 2013, directing the husband / petitioner herein to pay maintenance at the rate of Rs. 6,000/- per month in favour of his wife / Opposite Party herein and Rs. 4,000/- per month for the maintenance of the minor child of the parties, daughter, total being 10,000/-, is under challenge on the ground that no notice of the aforesaid proceeding was received by the petitioner and without service of notice / summon, the learned Principal Judge disposed of the petition under Section 125 Cr.P.C. with the above-said order.



2. It is further submitted by the learned Advocate for the petitioner that the petitioner filed a suit for divorce before the Family Court at Bandra, Mumbai, being Petition No. A-1516 of 2015 against the Opposite Party and the said suit too was disposed of *ex-parte* by passing a decree for divorce against the Opposite Party. In the said decree, the Trial Court passed an order of permanent alimony to the tune of Rs. 1,00,000/-, payable to the respondent / Opposite Party by the petitioner. It was further directed in the said decree that the petitioner was go on paying a sum of Rs. 2,000/- per month to his daughter towards her monthly maintenance.

3. It is the grievance of the petitioner that the amount of permanent alimony and monthly maintenance awarded to Opposite Party and their daughter, respectively, was not considered while passing the impugned order of maintenance.

4. The learned Principal Judge in the proceeding under Section 125 Cr.P.C. did not have the scope to consider the order passed in the suit for divorce regarding permanent alimony in favour of the Opposite Party and monthly maintenance in favour of their daughter, because of the fact that the impugned order was passed on 13th of February, 2018 and the suit for divorce was decreed on 20th of February, 2020.



5. The learned Advocate for the petitioner next submits that the petitioner has been working for gain in Mumbai. He is residing at Mumbai. However, summons through Court as well as personal service was sent to the address of the native village of the petitioner. The petitioner had no knowledge about the proceeding under Section 125 Cr.P.C. As summons was not properly served, the *ex-parte* order of maintenance is liable to be quashed and set aside.

6. The learned Advocate for the Opposite Party, on the other hand, submits that notice was duly served upon the family members of the petitioner, as per the provision of Order-V of the Code of Civil Procedure, which is applicable in case of service of notice / summons in proceeding under Section 125 Cr.P.C. Notice was considered to be properly served upon the petitioner. There is no illegality in the impugned order and therefore, the revision application is liable to be dismissed.

7. Having heard the submissions made by the learned Advocate for the parties, this Court is of the view that the learned Principal Judge is under an obligation to consider the fact of granting permanent alimony to the Opposite Party and maintenance allowance at the rate of Rs. 2,000/- per month to the daughter of the parties, while assessing the quantum of



maintenance.

8. In view of such circumstances, the impugned order is set aside and quashed.

9. The learned Principal Judge is directed to hear out Maintenance Case No. 46 of 2013 afresh only on the point of quantum of maintenance.

10. Since the Opposite Party has already divorced by an *ex-parte* decree passed by the learned 6th Family Court Judge at Bandra, Mumbai, in Petition No. A-1516 of 2015, the issue as to whether the petitioner has refused and neglected to maintain the wife or not is not required to be adjudicated upon because a divorced wife cannot stay at her matrimonial home and cannot be maintained by her husband and obtaining the decree of divorce presumably means that the petitioner refused and neglected to maintain his wife.

11. It is made clear that since the petitioner has appeared in the instant proceeding, no further notice is required to be served to the petitioner. The parties are directed to appear before the Trial Court within 15 days from the date of passing of this order. The learned Trial Judge is directed to rehear on the limited question of quantum of maintenance in the light of grant of permanent alimony to the Opposite Party and monthly



maintenance at the rate of Rs. 2,000/- to the daughter of the parties and dispose of the case within a period of three months from the date of appearance of the parties. The parties are at liberty to act on the served copy of the order.

12. In the meantime, without prejudiced to the rights and contentions of the parties, the petitioner is directed to pay maintenance allowance at the rate of Rs. 5,000/- per month to the Opposite Party No. 2.

13. Accordingly, this revision application stands disposed of.

(Bibek Chaudhuri, J)

skm/-

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