

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.556 of 2021

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

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Himanshu Kumar S/O Rajbahadur Rai R/O Village-Khardeula, Mahna P.S
Chanpatiya, District-West Chamapran.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Anju Kumari W/O Himanshu Kumar, D/O Indra Bhushan Singh R/O
Village-Khardeula, Mahna P.S. Chanpatiya, District-West Champaran, At
Present R/O Shree Krishna Nagar, P.S-Motihari Town, District-East
Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bimlesh Kumar Pandey, Advocate
For the State	:	Mr. Prem Kumar Jha, APP
For the O.P. No.2	:	Mr. Karandeep Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

4 17-10-2024 The present revision petition has been preferred against the impugned order dated 09.07.2021 passed by Id. Principal Judge, Family Court, East Champaran, Motihari in Maintenance Case No. 315 of 2019 whereby the petitioner has been directed to pay Rs.10,000/- to Opposite Party No.2 (wife) towards her maintenance as well as that of the child.

2. However, learned counsel for the petitioner submits that the impugned order has been passed *ex-parte* without service of notice upon the petitioner. He further submits that there is change of circumstance because subsequently his wife i.e. O.P. No.2 herein has joined as a teacher in the Bihar



Government School. Hence, the impugned order is not sustainable and the same is liable to be set aside.

3. However, he concedes that under Section 126 (2) Cr.PC, he has remedy to file Miscellaneous Application for setting aside the *ex-parte* order if the *ex-parte* order has been passed against him without service of notice upon him. He also concedes that there is another statutory provisions in Cr.PC by way of Section 127 under which he has remedy for alteration of the impugned order on account of changed circumstance.

3. Hence, learned counsel for the petitioner is seeking permission to withdraw the present petition with liberty to file appropriate Miscellaneous Application under Section 126(2) Cr.PC before the Ld. Family Court for setting aside the impugned order on account of non-service of notice.

4. Permission is granted.

5. Accordingly, the present petition is dismissed as withdrawn with liberty to the petitioner to file appropriate application before the Family Court under the relevant provisions.

6. At this stage, learned counsel for the O.P. No.2 also submits that so far there is arrear of Rs.1,18,000/- in pursuance of the impugned order. But, he concedes that there is provision



under Section 125(3) Cr.PC for enforcement of such order.

7. Hence, learned counsel for the O.P. No.2 is at liberty to file appropriate application before the Family Court for seeking his relief.

8. If any application is filed either of the parties, the same must be disposed of within two months in view of the urgency of the maintenance matter.

9. The application stands disposed of.

(Jitendra Kumar, J.)

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