

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.1023 of 2019**

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

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MD. MOHIUDDIN SAH @ MOHIUDDIN @ MD. MOHIUDDIN @ Md.
MAHIUDDIN @ MAHIUDDIN S/o Late Manir Sah R/o village-
Hathioundha, Ward No. 4, P.S.- Bihariganj, District- Madhepura

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR Bihar
2. Bibi Mahmuda Khatoon W/o Md. Mohiuddin Sah, D/o Md. Ilyas R/o village- Hathioundha, P.S.- Bihariganj, District- Madhepura
3. ZUBEDA D/O MADHIUDDIN SHAH R/O VILLAGE- HATHIONDHA, WARD NO. 4, PS.- BIHARIGANJ, DIST.- BHAGALPUR.
4. ZENAT D/O MD. MOHIUDDIN SHAH R/O VILLAGE- HATHIONDHA, WARD NO. 4, PS.- BIHARIGANJ, DIST.- BHAGALPUR.
5. MUSKAN D/O MD. MOHIUDDIN SHAH R/O VILLAGE- HATHIONDHA, WARD NO. 4, PS.- BIHARIGANJ, DIST.- BHAGALPUR.
6. KAREENA D/O MD. MOHIUDDIN SHAH R/O VILLAGE- HATHIONDHA, WARD NO. 4, PS.- BIHARIGANJ, DIST.- BHAGALPUR.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sharda Nand Mishra

For the Respondent/s: Mr.Mukeshwar Dayal

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CORAM: HONOURABLE MR. JUSTICE ARVIND SINGH CHANDEL

ORAL ORDER

10 09-07-2024

Heard on admission.

2. The present revision application has been preferred by the petitioner being aggrieved with the order dated 26.04.2019 passed by the learned Principal Judge, Family Court, Madhepura in Maintenance Case No. 98 of 2017, under Section 125 of the Code of Criminal Procedure, whereby the learned Family Court allowed the application of respondent No.2 and her children and directed the petitioner to pay a monthly maintenance of Rs. 4,000/- apiece to all the children i.e respondent Nos. 3, 4, 5 and 6 per month from the date of filing of



the application.

3. Heard learned counsel for the petitioner and perused the impugned order as well as the documents attached with the petition.

4. Perusal the order dated 01.08.2018 passed by the learned Family Court shows that it was found by the learned Family Court that the notice issued to the petitioner was informed to *Bhabhi* of the petitioner and she informed the Process Server that the petitioner is residing at Delhi, thereupon the Process Server pasted the notice at the door of the petitioner and submitted its report. On the basis of report submitted by the Process Server, the learned Family Court arrived at the conclusion that notice has been duly served upon by the petitioner and passed the *ex-parte* order, which is under challenge.

5. Further, perusal of the application submitted by respondent No.2 and her children under Section 125 Cr.P.C., which is at Annexure-1, shows that address of the petitioner is mentioned as **“R/o village Hathi Ondha, Ward No. 5, P.S. Bihariganj, Dist. Madhepura”**. There is no other material available on record to show or establish that at the time of service of notice, the petitioner was actually residing on that address given in the application. Order dated 01.08.2018 further shows that at the time of service of notice *Bhabhi* of petitioner



met with Process Server and it was informed that the petitioner was residing at Delhi despite that the learned Family Court arrived at a conclusion that the petitioner has duly been served and on the basis of aforesaid finding, the learned Family Court has passed the *ex-parte* order. The above finding recorded by the learned Family Court on 01.08.20218 appears to be perverse as it appears to be in gross violation of principles of natural justice and therefore, the impugned *ex-parte* order is liable to be set aside. Accordingly, the impugned order dated 26.04.2019 is, hereby, set aside and this criminal revision application is allowed.

6. The matter is remanded to the Family Court to consider and decide the matter after affording reasonable opportunity of hearing to both the parties. The petitioner is directed to remain present before the Family Court on 20.08.2024.

7. Accordingly, this revision application stands disposed of with the aforesaid observation and direction.

(Arvind Singh Chandel , J)

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