

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.245 of 2024

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

Vikash Gaurav, Son Of Late Visheshwar Singh, Resident Of Village -
Makkanpur, P.S. - Mahnar, District - Vaishali

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Anshu Kumari, Wife Of Vikash Gaurav, Daughter Of Sudhisht Prasad Singh
Resident Of Village - Makkanpur, P.S. - Mahnar, District - Vaishali. At
Present Daughter Of Sudhisht Prasad Singh, Resident Of Village - Chand
Sarai, P.S. - Jandaha, District - Vaishali

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Sunil Kumar Singh, Advocate
For the Respondent/s	:	Mr.Bhanu Pratap Singh, APP
For the Opposite Party No.2:		Mr.Bipin Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

14 28-07-2025 The petitioner is the husband of the Opposite Party
No. 2, and the Opposite Party No. 2, as petitioner, filed
Maintenance Case No. 66 of 2022 under Section 125 of the
Cr.P.C., praying for maintenance against the present petitioner.
The said proceeding was registered as Maintenance Case No. 66
of 2022. It was disposed of on 16th of May, 2023, directing the
petitioner to pay maintenance at the rate of Rs. 10,000/- per
month to the Opposite Party No. 2 within 10th of each
succeeding month according to English calendar.

2. The present revision has been filed on the ground
that no notice was served upon the petitioner and without



service of notice, the matter was heard *ex parte* and judgement was passed against him.

3. It is clearly stipulated in the proviso of sub-Section (2) of Section 126 of the Code that any order for payment of maintenance passed *ex parte* may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

4. In view of the afore-mentioned specific efficacious relief provided in Section 126 of the Code for setting aside an *ex parte* order, the instant revision is held to be not maintainable.

5. The learned Advocate for the opposite party, on the other hand, submits by filing a counter affidavit that the allegation made by the petitioner to the effect that he was not served with any notice is absolutely false. Notice of the proceeding under Section 125 of the Cr.P.C. was actually served on 31st of May, 2022 and the Trial Court on being satisfied fixed the case for *ex parte* hearing because of the fact that the petitioner did not turn up in spite of service of notice. There is a corresponding order in the order-sheet passed by the learned



Principal Judge, Family Court, Vaishali regarding service of notice. However, it is within the jurisdiction of the Trial Court to consider whether *ex parte* order was passed on proper appreciation of the fact regarding service of notice or not. The Revisional Court cannot look into the same.

6. For the reasons stated above, the instant revision is dismissed giving liberty to the petitioner to raise the issue before the Trial Court subject to the law of limitation.

7. Without prejudice the rights and contentions of the parties, this Court directs the petitioner to pay Rs. 7,000/- per month in favour of the opposite party from this month positively.

8. If the said amount of Rs. 7,000/- per month is not paid during the pendency of the maintenance case, this order shall not be effective and the Trial Court shall revive the execution case and pass order in accordance with law.

(Bibek Chaudhuri, J)

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