

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.615 of 2024

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

Deepak Kumar Harijan S/o Binod Harijan Resident of Adarshgram Bhojpur,
P.S-Tedhagachh Distt- Kishanganj

... .. Petitioner/s

Versus

1. The State of Bihar
2. Chandani Devi W/o Deepak Kumar Harijan, Resident of Adarshgram Bhojpur, P.S-Tedhagachh Distt- Kishanganj

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Raj Kumar, Advocate Mr. Sarvottam Kumar, Advocate Mr. Pratik Kumar, Advocate
For the Respondent/s	:	Mr. Raj Kishor Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 28-04-2025 The petitioner is the husband of the opposite party no. 2. The petitioner has challenged the *ex parte* order of maintenance passed by the learned Principal Judge, Family Court at Kishanganj in Maintenance Case No. 44 of 2021 *vide* order dated 2nd February, 2024 directing the husband to pay maintenance allowance at the rate of Rs. 4500/- per month to the wife and Rs. 3000/- per month to the minor child of the parties from her date of birth till she reaches the age of majority from the date of filing of maintenance petition, i.e., 15th April, 2021.

2. The said order is challenged on sole ground that the order of maintenance was passed *ex parte* without service of notice upon the petitioner/husband.



3. Having heard the learned Advocate for the petitioner and on perusal of the impugned judgment, this Court finds that in paragraph no. 3 of the impugned judgment, the trial court recorded *“Notice was sent to the respondent through Nazarat as well as speed post but despite service of notice, the respondent did not appear and the case was proceeded against him ex parte vide order dated 27th September, 2023”*. On perusal of order dated 27.09.2023, this Court finds that the father of the petitioner/husband received the summon on behalf of the petitioner/husband.

4. Section 64 of the CrPC states as under:

“64. Service when persons summoned cannot be found.—Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family residing with him, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.”

5. When this matter is pointed out to the learned



Advocate for the petitioner/husband, it is submitted by him that the petitioner/husband does not reside with his father. His father is also not a family member of the petitioner, therefore, notice delivered to the father of the petitioner was not held to be properly served upon the petitioner.

6. There is no such pleading in the application under Section 19(4) of the Family Courts Act that the petitioner does not reside with his father or that the father is not an adult male member of his family. On perusal of the trial court record, this Court finds that the notice was sent in the address of village Adarshgram Bhojpur, Police Station- Tedhagachh in the District of Kishanganj. This address is mentioned in the application filed under Section 125 of the CrPC as well as in the application under Section 19(4) of the Family Courts Act. Thus, the petitioner cannot contend that the notice was sent to some other address and his father received the said notice. In order to suppress service of notice, the petitioner/husband has approached this Court with a false statement on affidavit. This type of false assertion by unscrupulous and dishonest litigants should be dealt with by the Court in strong hand. Therefore, I find that notice was properly served upon the petitioner under Section 64 of the CrPC and in spite of service of notice, the



petitioner/husband refused and neglected to contest the maintenance case, therefore, I do not find any ground to set aside and vacate the *ex parte* order passed by the learned Principal Judge, Family Court, Kishanganj.

7. There is another reason for my reluctance to interfere with the impugned order. *Proviso* to Section 126(2) states that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is willfully avoiding service, or willfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte* and any order so made 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. Therefore, an *ex parte* order of maintenance may be set aside by the learned Family Courts Judge himself upon filing an application by the opposite party within three months from the date of passing of *ex parte* order. If the opposite party, petitioner herein, can satisfy the learned trial judge that no notice was actually served upon him.

8. Therefore, the efficacious relief is granted for setting aside an *ex parte* order of maintenance in *proviso* to



Section 126(2) of the CrPC. For the reasons stated above, the instant criminal revision filed under Section 19(4) of the Family Courts Act is not maintainable, therefore, the revisional application is accordingly dismissed.

9. Let the trial court record be returned to the court below.

(Bibek Chaudhuri, J)

Suraj Dubey/-

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