

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL REVISION No.722 of 2023**

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

=====

AVINASH KUMAR @ ABINASH KUMAR SON OF RAJ KISHORE  
SINGH R/o vill - Pagra, P.S. - Dalsinghsarai, Distt. - Samastipur

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rashmi Kumari Wife of Avinash Kumar @ Abinash Kumar, Daughter of Abhinandan Singh Resident of Village-Pagra, P.S.-Dalsinghsarai, District-Samastipur, presently residing at Village-Iniyaar, P.S.-Muffasil, District-Begusarai.

... .. Respondent/s

=====

**Appearance :**

For the Petitioner/s	:	Mr. Ujjwal Kumar
For the Informant	:	Mr. Sanjay Kumar Sharma
For the State	:	Mr. Pranav Kumar

=====

**CORAM: HONOURABLE MR. JUSTICE ARVIND SINGH CHANDEL  
CAV JUDGMENT**

**Date : 18-09-2024**

Heard learned counsel for the petitioner and learned  
counsel for the respondents/State.

2. This revision petition has been preferred by the petitioner/husband being aggrieved with the judgment dated 06.07.2023 passed by the Principal Judge, Family Court, Begusarai in Maintenance Case No. 145 of 2022, whereby and whereunder the learned Family Court allowed the application filed under Section 125 Cr. P.C. by opposite party/wife and passed the *ex parte* order against the petitioner and directed him to pay a monthly maintenance amount of Rs. 10,000/- to the



Opposite Party/wife.

3. It is submitted by learned counsel for the petitioner that since the peremptory order has been passed by the Family Court against the petitioner and no date of hearing has been provided by the Family Court to the petitioner, therefore on this ground only, the impugned order is liable to be set aside. Further he submits that though the order-sheet dated 24.04.2023, it has been mentioned that petitioner has full knowledge of filing of the maintenance case, in spite of that, he has not appeared but according to the learned counsel, the Family Court has not made any observation in the said order-sheet that the petitioner is wilfully neglected to attend the Court. Therefore, the impugned *ex parte* order is liable to be set aside.

4. Mr. Sanjay Kumar Sharma, learned counsel for the opposite party supported the *ex parte* impugned order passed by the Family Court and submits that since in spite of the knowledge of the pending maintenance case, the petitioner was wilfully not present before the Family Court, therefore, the Family Court rightly passed the *ex parte* order.

5. Heard both the learned counsels.

6. Perused the impugned order as well as the record of the Family Court.



7. It has been mentioned by the Family Court in paragraph-3 of the impugned order that after completing the entire proceeding for securing the presence of opposite party/husband, he did not present in Court. Therefore, he has been declared *ex parte* and *ex parte* order has been passed on 07.06.2023.

8. Perusal of the entire record of the concerned maintenance case, I do not find any document which shows that neither any notice has been issued by the Family Court nor has been served upon the petitioner herein. There is also no any document available on record which shows that any notice has been served to the petitioner through paper publication.

9. The order sheet dated 12.04.2023 shows that a list of document has been filed by the opposite party/wife before the Family Court through which she received the notice sent by this Court in Cr. Misc. No. 67729 of 2022(anticipatory bail) along with the said petition filed by the petitioner herein. In paragraph-9 of the said petition, it is mentioned that opposite party/wife has filed a Maintenance Case No. 145 of 2022 before the learned Principal Judge, Family Court, Begusarai. Thus, it is quite clear that on the date of submission of the said criminal miscellaneous i.e. on 12.04.2023, petitioner had knowledge



about the pendency of Maintenance Case No. 145 of 2022 before the learned Principal Judge, Begusarai. The learned Family Court on 24.04.2023, on this ground only arrived at the conclusion that in spite of having knowledge of maintenance case, petitioner did not appear in the Court and the matter was fixed on 07.06.2023. When the petitioner was not present before the Family Court then the learned Family Court declared him *ex parte* on 06.07.2023, finally *ex parte* order has been passed.

10. At this juncture, it would be appropriate to reproduce the provision of Section 126 (2) of Cr. P.C., which reads thus:

*All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases:*

*Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully 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.***

11. A plain reading of the proviso to Clause (2) of Section 126 of Cr. P.C. clearly shows that before proceeding *ex parte*, the learned Magistrate is required to satisfy that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service or wilfully neglecting to attend the Court.

12. On perusal of the order-sheet dated 07.06.2023, it transpires that the learned Family Court did not make any observation that the Court is satisfied that the petitioner herein wilfully neglected to attend the Court. Mere knowledge of submission of maintenance case is not sufficient, but information about the date fixed by the learned Trial Court to the petitioner is also required. From perusal of order-sheets dated 12.04.2023 and 24.04.2023, it also transpires that the Family Court, in any manner, informed the petitioner for fixing



of the maintenance case on 24.04.2023 and 07.06.2023. Thus, there is no material available on record which shows that the petitioner has any knowledge of fixing of the maintenance case on 07.06.2023, the date on which an *ex parte* proceeding drawn against him and further, there is also no material available on record which shows that on that date the petitioner wilfully neglected to attend the Court.

13. Therefore, in my considered view, on this ground only the impugned *ex parte* order passed by the Family Court is liable to be set aside. Accordingly, this revision petition is allowed. The impugned order dated 06.07.2023 is set aside. The matter is remitted back to the Family Court, Begusarai to decide the above maintenance case afresh after giving appropriate opportunity of hearing upon both the parties.

14. However, both the parties are directed to remain present before the Family Court, Begusarai on 12.11.2024.

**(Arvind Singh Chandel , J)**

shailendra/-

AFR/NAFR	NAFR
CAV DATE	30.08.2024
Uploading Date	18.09.2024
Transmission Date	18.09.2024

