

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
Cr. Revision (FC) No.41 of 2025
Decided on 21st September 2026

Nitin Dogra

...Petitioner

Vs.

Smt. Neha Sharma and another

...Respondents

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Hon'ble Mr. Justice Yogesh Jaswal, Judge

¹Whether approved for reporting? Yes

For the petitioner : Ms. Reeta Hingmang, Advocate.

For the respondents : Mr. Tek Chand, Advocate.

Ajay Mohan Goel, Judge (Oral)

By way of this petition, the petitioner has assailed order dated 06.06.2025, in terms whereof, the petition filed under Section 125 of the Criminal Procedure Code by the respondents herein has been decided by the Court of learned Principal Judge, Family Court, Kangra at Dharamshala, District Kangra, H.P., in the following terms:-

“As a sequel of my aforesaid reasons and findings, the petition succeeds and is allowed. The respondent is directed to pay monthly maintenance allowance in the sum of Rs.3,000/- (Rs. Three Thousand only) to applicant No.1 and montly maintenance allowance in the sum of Rs.5,000/- (Rs. Five Thousand only) to applicant No.2 from the date of filing the present petition alongwith education and medical charges of petitioner No.2. As the applicant No.1 has produced on record the receipts of education expenses incurred on applicant No.2 to the

tune of Rs.27,023/- as such, the respondent is also directed to pay a sum of Rs.27,023/- as education expenses to the applicant. Copy of this order be supplied to the parties free of cost. File after due completion be consigned to the record room.”

2. Learned counsel for the petitioner argued that the impugned order is not sustainable in the eyes of law for the reason that the petitioner stood erroneously proceeded against *ex parte* in the case at the first instance and as the adjudication of the application for setting aside the *ex parte* order took time, the petitioner cannot be made to suffer for the period consumed in deciding the application.

3. Having heard learned counsel for the petitioner and having perused the record, as also the impugned order, we are of the considered view that there is no perversity in the order, either on merit or on the ground urged by the petitioner in the petition.

4. A perusal of the record demonstrates that the proceedings under Section 125 of the Criminal Procedure Code were initiated by the respondents herein, i.e., the wife and the minor daughter of the petitioner in the month of November 2021. The address of the petitioner was mentioned as under in the said petition:-

"Nitin Dogra, S/o Shri Pawan Dogra, R/o VPO Tikkar, Tehsil Palampur, District Kangra (H.P.)."

5. Notice was issued to the present petitioner by the learned Court below in the matter and ultimately on 20.06.2022, the following order was passed by the learned Court:-

"Taken up today as per office order dated 19.04.2022.

20.06.2022

*Present: Sh. Ankur Chawla, Advocate for the petitioner.
None for the respondent.*

Heard. The learned counsel for the petitioner has placed on record Postal Tract Record of RAD event details for receipt No. RE798177162IN sent by this court to the respondent. which shows that the RAD has been delivered to the respondent. Petition called time and again, neither respondent nor any counsel appeared on his behalf. It is 11:10 a.m. Be put up after lunch.

*(Pune Ram)
Principal Judge,
Family Court, Kangra at Dharamshala.*

After lunch:

20.06.2022

*Present: Sh. Ankur Chawla, Advocate for the petitioner.
None for the respondent.*

RAD issued to the respondent by this Court on 04.06.2022 as per Postal Tract Record of RAD event details for receipt No. RE798177162IN confirmed and attested by the Assistant Post Master, Dharamshala, which reveals that the RAD has been delivered to the

respondent on 17.06.2022. In support of this point, learned counsel for the petitioner has referred the law laid down by Hon'ble Apex Court of India in Basant Singh and another Versus Roman Catholic Mission, Civil Appeal No. 6489 of 2002 decided on October 3, 2002 in its Para No. 9, it is held that Order 5, proviso to sub-rule (2) of Rule 19-A CPC provides that the summons are properly addressed, prepaid and duly notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the court within thirty days from the date of the issue of the summons, the court shall presume that notice is duly served.

In view of the aforesaid observations of the Hon'ble Apex Court of India, the respondent is presumed to be duly served for today. Petition called time and again, neither respondent nor any counsel appeared on his behalf. It is 3:10 p.m. Hence, the respondent is hereby proceeded ex parte. Now, the petition is listed for the ex parte evidence of the petitioner. Let all the Pws be summoned on filing of list, PF/DM etc. within 10 days, to come up on 22.07.2022."

6. On the basis of these orders, the present petitioner was proceeded against *ex-parte*.
7. Thereafter, the petitioner herein filed an application for recall of aforesaid order, copy thereof is appended with the present petition as Annexure P-3.
8. The contents of the application are being quoted hereinbelow for ready reference:-

"1. That the above titled petition U/s 125 Cr.P.C. is pending adjudication before this Hon'ble Court and is fixed for 23.09.2022 for ex parte evidence of the petitioner.

2. That the applicant/respondent was not aware of any proceedings pending disposal against him in any court of law needless to say the present proceedings U/s 125 Cr.P.C. in this Hon'ble Court.

3. That the applicant/respondent stays out of the vicinity of District Kangra for his professional engagement and it was for this reason was not conversant with the present proceedings as he was not served on his professional address at Baddi, Tehsil Baddi, Distt. Solan, H.P. It is pertinent to mention here that the applicant/respondent lost his job on 30.06.2022 and then came to his native place village & PO Tikker, Tehsil Palampur, Distt. Kangra, H.P.

4. That after coming to native his place the applicant/respondent established contact with the respondent/petitioner No.1 in order to concile the matter with her and to take her back to the matrimonial house to which the respondent/petitioner bluntly refused and concealed the fact that above titled case is instituted by her against the applicant/respondent in this Hon'ble Court.

5. That the applicant/respondent in the month of September, 2022 then met his father-in-law (father of the respondent/petitioner No.1) so that the matter between both the parties can be resolved by mediation of both the families. The father in law of applicant/respondent revealed the fact that the present case is pending disposal in this Hon'ble Court and the applicant/respondent is proceeded against ex parte on 20.06.2022.

6. That the non-appearance of the applicant/respondent in the above mentioned matter is not intentional but was due to the reason that he was unaware of the present proceedings.

7. That no evidence has been led by respondent/petitioner No.1 in this matter and the matter is fixed for ex parte evidence, therefore no prejudice will be caused to the respondent/petitioner if the applicant/respondent is allowed to join the proceedings of the present case."

9. In terms of this application, it was averred therein that the matter was pending before the learned Court and fixed for 23.09.2022 for *ex-parte* evidence of the petitioner therein, i.e., the wife. It was further averred in the application that the applicant was not aware of the proceedings pending against him, as he was staying out of the vicinity of District Kangra for his professional engagement and, therefore, was not conversant with the ongoing proceedings, as he was not served on his professional address at Baddi. It was also averred in the application that the applicant lost his job on 30.06.2022 and then came to his native place, i.e., "Village and Post Office Tikkar, Tehsil Palampur, District Kangra, H.P." Further, it was averred in the application that after coming back to his native place, the applicant established contact with his wife in order to reconcile the matter, however, she bluntly refused and informed

him that she had instituted a case against him. The applicant thereafter met his father-in-law in the month of September 2022 again to reconcile the matter. The father-in-law of the applicant revealed the fact that the case was pending in the Court concerned, wherein, the applicant/respondent stood proceeded against *ex parte*.

10. According to the applicant, his non-appearance was not intentional, but, was for the reason that he was not aware of the present proceedings. In this factual backdrop, a prayer was made to allow him to join the proceedings.

11. Record further demonstrates that said application was presented on 21.09.2022 and in terms of order dated 13.05.2024, upon no objection made on behalf of the wife, the application was allowed and *ex-parte* order was set aside.

12. It is evident from the perusal of the averments made in the application that the averments made therein as to why the applicant could not earlier appear in the proceedings were that he was not served at the address where he was gainfully employed. Now, there is no averment in the application that the address of the present petitioner given in the proceedings

initiated by the wife was not his correct parental address/ permanent address. It is not even whispered in the application that the wife of the applicant was very well aware that the applicant was not available on said address and that he was serving somewhere else, yet she willfully gave the said address in the petition so that the applicant could not be served.

13. Not only this, as has been observed by us hereinabove also, it was specifically averred in the application by the present petitioner that after he lost his job on 30.06.2022, he came back to his native place and the native place, as mentioned in the application, is the same which is depicted as the address in the petition filed under Section 125 Cr.P.C.

14. In the present proceedings also, the address which has been given by the petitioner in the memo of parties as also the affidavit filed in support of this petition is the same as mentioned in the petition filed under Section 125 of the Cr.P.C.

15. Therefore, in this backdrop, as the petitioner was rightly proceeded against *ex-parte* earlier by the learned Court below, as his address given in the petition under Section 125 of

Cr.P.C., happened to be his permanent address and simply, because the application filed for setting aside the ex parte order was subsequently allowed, upon no objection given by the wife, the petitioner herein cannot be allowed to take advantage of his own acts of omission, by accepting his plea that the period in between the filing of the application and adjudication thereof has to be remitted for the purpose of payment of maintenance to the wife and the children.

16. Further, a perusal of the order under challenge demonstrates that the amount of compensation which has been awarded is Rs.3,000/- to the wife and Rs.5,000/- to the child along with certain education expenses, which by no stretch of imagination, can be said to be on the higher side. Otherwise also, the petitioner is both legally and morally bound to maintain his wife and child.

17. Accordingly, in light of the above observations, as we do not find any infirmity in the order under challenge and further, as we do not find any merit in the present petition, the same is dismissed.

18. Pending miscellaneous applications, if any, also stands disposed of.

(Ajay Mohan Goel)
Judge

(Yogesh Jaswal)
Judge

September 21, 2026
(*Vinod*)