

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 71 of 2016**

Temak Lal Maitri S/o Babulal Maitri Aged About 32 Years R/o Village -
Taldewari, Tahsil & P.S. Sarangarh, Distt. Raigarh, Civil & Revenue Distt.
Raigarh (CG)

---- Applicant

Versus

1. Manjula Singh Maitri W/o Tekam Lal Maitri Aged About 30 Years
2. Minor Krish @ Madhusudan S/o Tekam Lal Maitri Aged About 5 Years
Both R/o Village - Taldewari, Tahsil & P.S. Sarangarh, Distt. Raigarh, Civil &
Revenue Distt. Raigarh (CG)

---- Respondents

For petitioner	:	Mr. M.K. Sinha, Adv.
For Respondents	:	None.

Order On Board**22/03/2016**

Mr. M.K. Sinha, Adv. for the petitioner.

None for respondents though served as per office note and also as per service report whereby both the respondents are directed to appear in person or through their counsel for taking part in hearing of the case on 8-3-2016.

As the respondents are not represented despite service the matter is heard finally at motion stage itself.

2. Brief facts of the case necessary for disposal of instant CRMP are that Judicial Magistrate First Class, Sarangarh, CG has decided a M.J.C. Cr. No. 8/10 (Manjula Singh Maitri and anr. -v- Temak Lal Maitri) under Section 125 of the Code of Criminal Procedure, 1973 (in brevity 'Cr.P.C.') vide order dated 12-1-2015 and allowed the application made on behalf of the present respondents and ordered for grant of maintenance as per para 11 of the impugned order. Thereafter the present applicant had filed a criminal revision under Section 397 of the Cr.P.C. on 16-6-2015 against the said order along with an application under Section 5 of the Limitation Act, 1963 for condonation of delay in filing the said criminal revision. The revisional court / Additional Sessions Judge, Sarangarh, CG heard the matter and also heard the application under Section 5 of the Limitation Act and held that the application filed under Section 5 of the Limitation Act is not bonafide as the applicant failed to show good cause for filing the criminal revision

lately and thereby dismissed the said application under Section 5 of the Limitation Act. Against the said order the applicant has filed instant CRMP invoking jurisdiction of this Court under Section 482 of the Cr.P.C. wherein it is prayed that though the applicant properly explained the reasons for delay, even then the revisional court by not appreciating those facts and other circumstances committed error. An opportunity may to be granted to the applicant to prove the said criminal revision on its merit hence it is prayed that the impugned order dated 18-12-2015 of the unregistered revision petition may be quashed. The revisional court may be directed to hear the case on its merit by allowing the application under Section 5 of the Limitation Act.

3. Since despite service there is no representation on behalf of the respondents, there is no material to rebut the document annexed along with instant Cr.M.P.
4. Learned counsel for the applicant submits that as required under Article 131 of Second Schedule Part I of the Limitation Act, the period prescribed for revision is 90 days. About 3 months more the applicant had filed the criminal revision and he properly explained the delay that the younger brother of the present applicant developed mental ailment and the applicant was busy and engaged in his treatment and also in search of his younger brother and thereafter though the copy of the order received by the applicant on 30-6-2015 he had filed the criminal revision on 16-6-2015. Therefore after expiry of a very short period after limitation prescribed he had filed the revision. The Addl. Sessions Judge committed error by not appreciating the facts and dismissed the application for condonation of delay. Even otherwise, the applicant intended to be heard in the revision petition on its merit which goes to show his bonafide. Hence the order dated 18-12-2015 may be quashed. The application under Section 5 of the Limitation Act may be allowed and the revision may be heard on its merit.
5. In order to appreciate the arguments advanced in this behalf, the instant CRMP, the documents annexed and the order dated 12-1-2015 of the trial Court, order dated 18-12-2015 of the revisional court are perused.
6. Perusal of the entire material goes to show that the revision was required to be filed on or before 21-3-2015 but the same was filed on 16-6-2015 i.e. after 2 months and about 25 days. The reasons mentioned in the application for condonation of delay and other documents go to show that the said delay of 2 months and 25 days requires consideration looking to the mental ailment of younger brother of the applicant. The court ought to have allowed

the application under Section 5 of the Limitation Act and had to proceed with the hearing of the said revision on its merit.

7. On due consideration, looking to the entire facts, circumstances and the documents adduced, an opportunity would serve the ends of justice.
8. Consequently, the instant CRMP is allowed. Said unregistered criminal revision is restored to its original number. The revisional court is directed to register the said criminal revision and after affording opportunity of hearing to the respondents, dispose of the said revision on its merit. It is informed that the revisionist is at present languishing in jail in connection with non-deposit of maintenance amount. If so, the petitioner is directed to appear through his counsel before the Additional Sessions Judge, Sarangarh on 4-5-2016. The court below is directed to record appearance of the revisionist through his counsel and to proceed further in the matter as per law.
9. Certified copy as per rules.
10. The applicant may file copy of this order before the revisional court for compliance. The Registrar Judicial is also directed to send a copy of this order to the revisional court through usual and fax mode immediately.
11. CRMP allowed.

Sd/-
(Chandra Bhushan Bajpai)
Judge