

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 915 of 2015

1. Arvind Singh S/o Radhamohan Singh, aged about 29 years, R/o Gram - Katainar, P.S. Banki-mongra, Distt. Korba Chhattisgarh

---- Applicant

Versus

1. Smt. Reena Singh W/o Arvind Singh, aged about 28 years, R/o In the House of Vedbhushan Dwivedi, Imaliduggu, P.S. City Kotwali, Korba, Tah. & Distt. Korba, Chhattisgarh Presently R/o, C/o Jagnarayan Singh Jailgano, Block No. 12 N.T.P.C. CSEB, Colony, P.S. Darri, Tah. Katghora, Distt. Korba Chhattisgarh
2. Vaibhav Singh (Minor) S/o Arvind Singh, aged about 2 years, Through - Legal Guardian (Mother) Smt. Reena Singh R/o In the House of Vedbhushan Dwivedi, Imaliduggu, P.S. City Kotwali, Korba, Tah. & Distt. Korba, Chhattisgarh Presently R/o, C/o Jagnarayan Singh Jailgano, Block No. 12 N.T.P.C. CSEB, Colony, P.S. Darri, Tah. Katghora, Distt. Korba Chhattisgarh

---- Respondents/Non-applicants

For Applicant – Shri Raj Kumar Gupta, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

03/02/2016

1. Learned counsel for the applicant submits that looking to the facts of the case as the order passed by the Court below is incorrect, illegal, improper, hence, the matter may be heard finally at the motion stage itself without noticing to the respondents.
2. On due consideration, the instant criminal revision preferred within its limitation and as per facts of the case, the matter can be disposed of without even noticing to the respondents. Hence, the matter heard finally at the motion stage itself.
3. Brief facts, as per the revision petition, are that respondent No.1 had filed an application before the Judge, Family Court Korba, C.G. under Section 125 of the Cr.P.C. which is registered as MJC No.98/2014. As the applicant was not represented, the Court below proceeded ex-parte and after hearing

the matter ex-parte passed the order on 17-12-2014 and directed therein that for maintenance Rs.5000/- and Rs.3000/-, in total Rs.8000/- be given to the respondents every month. The applicant was in custody in Criminal Case No.1149/2014 (State Vs. Devendra Sadhu and three others, wherein he was arrayed as accused No.2) pending before the Judicial Magistrate First Class, Katghora, District Korba, C.G. As per para 16 of the judgment dated 18-03-2015 passed in the aforesaid criminal case, he was in custody from 01-11-2014 to 18-03-2015. The present applicant and other co-accused were acquitted for the charges. Thereafter, when the applicant came to know regarding the ex-parte order passed against him in the MJC No.98/2014, he filed an application under Order 9 Rule 13 of the CPC on 30-03-2015. The said application was registered as MJC No.80/2015. After hearing both of the parties, vide order dated 03-10-2015, the Court below held that as required under the provisions of law for Order 9 Rule 13, i.e., within 30 days no any application has been preferred to set aside the ex-parte order, also no any application under Section 5 of the Limitation Act has been filed to condone the delay, hence, the application under Order 9 Rule 13 of the CPC is not maintainable. Consequently, the Court below dismissed the application filed by the applicant.

4. Against the said order the applicant has preferred the instant criminal revision under Section 19 (4) of the Family Courts Act read with Section 397 of the Cr.P.C. and has prayed that as the applicant was in custody from 01-11-2014 to 18-03-2015 and at the relevant point of time, he has not earned anything. During this period, ex-parte order of maintenance has been passed. The applicant was not aware about the law prevailing and by mistake he had filed the application under Order 9 Rule 13 of the CPC, but as the provision of Section 126(2) of the Cr.P.C. is available to set aside the ex-parte order passed against him after demonstration of good cause for the ex-parte within 3 months from the date thereof subject to such terms as the Magistrate thinks

just and proper; and as the applicant was behind the bars till 18-03-2015 he was not in a position to defend himself and also not in a position to challenge the order passed earlier against him. Hence, it is submitted that the petition may be allowed and the matter may be remanded back for reconsideration. As the matter belongs to proviso to 126(2) of the Cr.P.C.

5. I have heard learned counsel for the applicant.

6. Learned counsel for the applicant would submit that though the application was filed under Order 9 Rule 13 of the CPC, but in the present facts of the case, proviso to Section 126(2) of the Cr.P.C. is applicable. If any wrong provision was put, it was for the Court to hear the matter under the relevant provision of law. Learned counsel would further submit that till 18-03-2015 the applicant was behind the bars, he was not a free citizen, this made him unable to defend himself in the matter. Only after getting the order of acquittal from the said criminal Court and after release on 18-03-2015, he came to know regarding the said ex-parte order passed against him and with this, the matter may be reconsidered under the relevant provision of Section 126(2) of the Cr.P.C. and also he may be permitted to support the application along with application under relevant limitation laws regarding the condonation of delay beyond 90 days as mentioned in the provision. Learned counsel would further submit that there is illegality, impropriety and incorrectness in the order passed by the Court below, therefore, the matter may be remanded back and the Court below may after hearing both the parties pass the order afresh.

7. For the purposes of appreciation regarding the arguments advanced in this behalf, I have perused the petition, documents and the order passed by the Court below dated 03-10-2015.

8. From face of the record, the applicant succeeded to demonstrate that he was in jail in connection with aforementioned criminal case from 01-11-2014 to 18-03-2015. In the said MJC No.98/2014 the ex-parte order was passed on 14-11-2014 and thereafter after hearing the application therein the Court below

passed the final order in the said MJC No.98/14 on 17-12-2014. On the said date undisputedly the applicant was in jail. He was released on 18-03-2015. It goes to show his unavailability to properly defend him as required.

9. From the perusal of the MJC No.80/2015, it is also apparent that though the application was filed under Order 9 Rule 13 of the CPC, but it was the duty of the Court below to take up the matter under the relevant provision of law. By not applying the correct provision of law, in the considered view of this Court, the Court below has committed illegality and impropriety and passed incorrect order. The Court below was required to deal with the matter in the light of proviso to Section 126(2) of the Cr.P.C. Also while hearing the matter the Court below was required to award an opportunity to file application under relevant provision of Limitation laws for condonation of delay, if any.

10. With the above, this Court is of the view that order dated 03-10-2015 requires interference. Consequently, order passed by the Court below on 03-10-2015 is hereby set aside. The matter is remanded back. The Court below is directed to re-hear the matter treating the application as under proviso to Section 126(2) of the Cr.P.C., afford opportunity to file application for the condonation of delay, if any, and after hearing both the parties pass an order afresh without being influenced by the appreciation as in impugned order dated 03-10-2015. The applicant is directed to appear before the Judge, Family Court Korba, C.G. for afresh hearing in the MJC No.80/2015 on **09-03-2016** in person or through his counsel for further hearing in the matter. Opportunity of hearing be also given to the respondents, as per law.

11. The petition allowed at the motion stage itself.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE