

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.462 of 2015**

Radheshyam Thakur (Jhariya) S/o Suklal Thakur Aged About 36 Years R/o Singanpur, Tahsil- Jagdalpur, District- Jagdalpur (Bastar) Chhattisgarh.

----- **Petitioner****Versus**

1. Master Harsh S/o Radheshyam Thakur (Jhariya) Aged About 2 Years Minor Through Legal Guardian Mother Smt. Monika @ Pinki Thakur,
2. Smt. Monika @ Pinki Thakur W/o Radheshyam Thakur Aged About 33 Years R/o Shankar Singh Thakur,

Both are present resident of Shankar Singh Thakur, Village- Singhola, Police Station- Lalbag Gramin, Tahsil And District- Rajnandgaon, Chhattisgarh.

---- **Respondents**

For Petitioner	:	Shri DK Vishwakarma, Advocate.
For respondents	:	Shri Parag Kotecha and Shri Waquar Naiyar, Advocates.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****04/10/2016**

1. The present petition has been preferred seeking for quashment of order dated 14.08.2014 whereby in a proceeding under Section 125 CrPC, the court below has allowed the application and ordered for payment of Rs.4000/- to respondent No.1 and Rs.2000/- to respondent No.2 as maintenance.
2. A bare perusal of the order dated 14.08.2014 itself reflects that the said order is an exparte order. Proviso to Sub-section 2 of Section 126 of CrPC clearly provides that in the event if sufficient cause has been explained by the petitioner in respect of his non appearance before the

court hearing the proceeding under Section 125 CrPC, the Magistrate may consider and set aside the order of exparte and hear the matter again.

3. The High Court of Karnataka in case of Suryakanth Vs. Smt. Allamaprabhu @ Allawwa, reported in 2000 Cr.LJ-120, has held as under :

“This Court in the case of P.N. Godaiah has only made reference to compliance or non-compliance of the first part of the proviso and therefore, cannot be considered that an application for setting aside the order of ex parte made under Section 125 is not maintainable. If the final order determining the case ex parte have been passed under Section 125 the application under Section 126(2) of the Cr. P.C. is maintainable. The only thing on such an application could be seen is, as to whether a good cause have been shown by the applicant, which is a matter to be examined by the Trial Court and if the Court is satisfied that a good cause is shown then the application has to be allowed.....

.....There is no definition of "judgment" in Cr. P.C. Section 2(9) of the CPC defines the judgment as statement be given by the Judge of the grounds of the decree or order. An interlocutory order in a criminal case is not a judgment. Proceedings under Section 125 are all summary in nature. Section 125 itself has used the word "order" in different sub-sections and, therefore, the word "order" used in Section 126(2) has to be interpreted to include the order passed on the application under Section 125 which may be the interim order placing the other side ex parte and also an order which has finally been passed under Section 125.”

4. In the opinion of this court also, since it is an exparte order passed by the court below, it would be more appropriate if the petitioner is directed to approach the court below by moving an appropriate application

seeking for setting aside of the exparte order and in case if he is able to explain his absence, the court below may consider for setting aside of the exparte order and may proceed further with the case on its own merits.

5. In the event if the application is filed by the petitioner for setting aside exparte order dated 14.08.2014 within a period of 45 days from today, the period of limitation of three months for questioning the said exparte order shall not come in the way of the petitioner.
6. With the aforesaid observation, the revision petition stands finally disposed.

Sd/-
(P. Sam Koshy)
Judge

inder