

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 395 of 2016**

Kishore Prajapati S/o Shri Alopri Prajapati, aged about 36 years R/o Chaubey Colony, Geeta Nagar Raipur, Tahsil & District Raipur, Chhattisgarh.

---- Applicant**Versus**

1. Smt. Manisha Prajapati W/o Kishore Prajapati, aged about 30 years R/o Village Akarjan, P.S. & Tahsil Khairagarh, District Rajnandgaon, Chhattisgarh.
2. Ku. Raina D/o Kishore Prajapati, aged about 9 years minor, through non applicant No. 1 Smt. Manisha Prajapati, R/o Village Akarjan, P.S. & Tahsil Khairagarh, District Rajnandgaon, Chhattisgarh.
3. Kumari Raunak S/o Kishore Prajapati, aged about 5 years, minor, through non applicant No. 1 Smt. Manisha Prajapati, R/o Village Akarjan, P.S. & Tahsil Khairagarh, District Rajnandgaon, Chhattisgarh.

---- Respondents

For Applicant	:	Shri Uttam Pandey, Advocate
For Respondents	:	None

Hon'ble Shri Justice P. Sam Koshy**Order On Board****06/12/2016**

Challenge in the present revision is the order dated 08.04.2016 passed by the Family Court, Circuit Court, Khairagarh, District Rajnandgaon in Misc. Criminal Case No. 72 of 2014. Vide the impugned order the Court below has refused to set aside the *ex parte* order dated 07.11.2013 passed in M.J.C. No. 78 of 2012.

2. Facts in brief are that the respondents moved an application under Section 125 of CrPC before the Family Court, Khairagarh where the case was registered as MCC No. 78 of 2012. After registration of

the case, notice was issued to the respondent but there was no representation on behalf of the respondent i.e. the present applicant. Therefore, the Court below proceeded *ex parte* with the case and vide order dated 07.11.2013 directed the present applicant for payment of Rs.6,000/- per month to the respondents as maintenance.

3. The said order dated 07.11.2013 was put to challenge before this Court in Criminal Revision No. 510 of 2014. This Court vide its order dated 21.08.2014 disposed of the revision petition directing the applicant to first approach the Family Court and to file an application under Section 126 (2) of CrPC seeking for setting aside of the *ex parte* order. While disposing of the said revision this Court had also directed the Family Court that in the event any such application is moved by the applicant the same shall be decided expeditiously.

4. Subsequently, the applicant moved an application under Section 126 (2) of CrPC before the Family Court on 10.09.2014 which was registered as MCC No. 72 of 2014. After hearing the counsel for the applicant, the Court below vide impugned order dated 08.04.2016 rejected the said application on the ground that the applicant has not shown sufficient reason for setting aside the *ex parte* order neither has the application been filed within the period of limitation within which it should have been filed and also there was no specific direction by the High Court in respect of the condonation of delay caused in filing of the application. Hence, the present revision has been filed.

5. This Court while admitting the present revision petition on 14.06.2016 had issued notice to the respondents and also granted interim protection to the applicant to the extent that the maintenance payable to the respondents would be Rs.4,000/- per month in stead of Rs.6,000/- as awarded by the Family Court. Subsequently, there was no representation on behalf of the respondents in spite of notice duly

served to them and the power also being filed on their behalf. Meanwhile, on 17.10.2016, in the presence of both the parties, the matter was referred to the Mediation Centre and the parties were directed to remain present before the Mediator on 26.10.2016. It was also ordered that after the mediation proceeding was drawn, the matter be listed before the Court on 5th December, 2016.

6. However, counsel for the applicant submits that in spite of three occasions given by the Mediator for mediation, there was no representation on behalf of the respondents.

7. Yesterday also, when the matter was taken up for hearing, there was no representation on behalf of the respondents either in person or by her lawyer and the matter was ordered to be listed today. Today also, there is no representation on behalf of the respondents. In the absence of any representation on behalf of the respondents this Court is constrained to hear and decide the matter finally without any representation on behalf of the respondents.

8. Taking into consideration the reasons assigned in the present revision petition and in the absence of any rebuttal by the respondents, this Court is satisfied with the explanation put forth by the counsel for the applicant.

9. Accordingly, the present Criminal Revision is allowed. The *ex parte* order dated 07.11.2013 stands quashed/set aside and the matter is remitted back to the trial Court to pass a fresh order after hearing both the parties.

10. It is ordered that pending the matter before the Court below, the present applicant shall continue to pay the maintenance amount of Rs.4,000/- per month to the respondents as awarded by this Court as an interim measure. It is expected that the Court below subject to the

co-operation by the parties shall take a final decision as expeditiously as possible.

Sd/-
(P. Sam Koshy)
JUDGE

Bhola