

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO. 922 OF 2016

Nandkishore Hota, S/o Shankarshan Hota, aged about 29 years, R/o behind Bansula Dipo, Basna, Police Station & Post Basna, District Mahasamund (C.G.), through father and next friend namely Shankarshan Hota, S/o Ramdas Hota, aged about 62 years, R/o Behind Bansula Dipo, Basna, Police Station & Post Basna, District Mahasamund (C.G.)

... Applicant

Versus

Smt. Yashoda @ Janki Hota, W/o Nandkishore Hota, aged about 27 years, R/o Village Chiwrakuta, Police Station & Post Saraipali, District Mahasamund (C.G.)

... Non-applicant

For Applicant	:	Mr. Manoj Paranjpe and Mr. Anurag Singh, Advocates.
For Non-applicant	:	None appears, though served.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/02/2017

1. By way of the present Criminal Revision under Section 19(4) of the Family Courts Act, the Applicant intends to challenge the order dated 11.8.2016 passed by the Family Court, Mahasamund, Camp Court- Saraipali, District Mahasamund, in Misc. Criminal Case No. 12 of 2016.
2. Vide impugned order dated 11.8.2016, the Court below in a proceeding under Section 125 of CrPC has allowed the application and ordered the present Applicant to pay an amount of Rs.2000/- as maintenance to the Non-applicant every month.
3. The sole contention of the Counsel for the Applicant before this Court seeking interference of the impugned order is that, the Applicant is a person of unsound mind and the order could not have been passed against a person of unsound mind. He further submits that the Judicial Magistrate First Class, Saraipali, vide its order dated 24.9.2012 had ordered for getting the Petitioner examined by the Government Civil Surgeon or Government Medical Officer

and to submit a report so as to ascertain whether he is of unsound mind or not. But, subsequently, the case got transferred from the Court of Judicial Magistrate First Class, Saraipali to the Family Court at Mahasamund. Before the Family Court, Mahasamund, he has not been granted sufficient time for producing the said report and therefore the impugned order deserves to be interfered with and is liable to be set aside. According to the Counsel for the Applicant, the matter may be remitted back to the Court below so that the Applicant can produce the certificate from the Government Civil Surgeon which would determine as to whether he is of unsound mind or not.

4. However, a perusal of the record would show that the Applicant on earlier two occasions also moved applications in this regard which had been rejected and against one of which, a revision was also preferred which too got rejected and it is the third application which was moved by the Applicant on 29.8.2012 for appointment of a next friend so that the Applicant can be defended properly before the Court below as he is of unsound mind. The first application in this regard got rejected on 10.6.2011 and the second application got rejected on 2.6.2012. Against the rejection, the Applicant had earlier preferred a revision before the Revisional Court which too stood rejected on 11.3.2013. The third application moved on 29.8.2012 was allowed by the Judicial Magistrate First Class, Saraipali, on 24.9.2012, with a direction to the Applicant to get himself examined before the Government Civil Surgeon or the Government Medical Officer and to submit a report in this regard. Meanwhile, the Court below had also deferred the consideration on interim maintenance application which was filed by the claimant. While allowing the application on 24.9.2012, the Magistrate Court had adjourned the matter for 22.11.2012. However, from 22.11.2012 the matter in between was taken up by the said Court on seven occasions at regular intervals till 8.2.2016 when the matter was transferred to the Family Court, Mahasamund. During, this four years

period, the Applicant could not produce before the Court below the certificate from the Government Civil Surgeon or the Medical Officer, which itself is sufficient to draw an inference that the Applicant did not get himself examined before the said medical authorities. Subsequent to the matter getting transferred to the Family Court, Mahsamund on 8.2.2016, again the matter was adjourned on 6-7 occasions at regular intervals. During this period also the Applicant could not get examined before the said medical authorities and the Family Court, Mahasamund ultimately vide impugned order dated 11.8.2016 has been forced to pass an ex parte order against the Applicant ordering for payment of Rs.2000/- as monthly maintenance to Non-applicant/wife.

5. The prayer of the Counsel for the Applicant at this juncture for grant of one more opportunity does not seem to be a justified or bonafide claim on account of the fact that it is not a case where the Courts below have shown any haste in disposal of the matter. Even after allowing the application on 24.9.2012, the Applicant was granted ample opportunity before the Magistrate Court at Saraipali itself where the matter was pending for almost four years after the application was allowed on 24.9.2012. Subsequently, even after the matter was transferred to the Family Court at Mahasamund, there was an adjournment on more than 6-7 occasions, during which time also from the order-sheet it reflects that the Applicant was being represented through a lawyer on most of the occasions and was also granted time to produce the certificate, still the Applicant could not produce the necessary certificate to establish the fact that he is of unsound mind.

6. In the absence of any such document on record nor there being any efforts made by the Applicant, he cannot be given any sympathetic consideration only on the oral submissions made by the Counsel for the Applicant. It is a case where sufficient and ample opportunity was granted to

the Applicant. The impugned order does not seem to suffer from any illegality or infirmity.

7. The present Criminal Revision thus being totally devoid of merits deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/