

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO. 127 OF 2016

Bhuneshwar Sahu, aged about 30 years, S/o Bharat Sahu, R/o Thana Muski,
Thana Tumgaon, Civil and Revenue District Mahasamund (C.G.)

... Applicant

Versus

1. Smt. Parwati Sahu, aged about 24 years, W/o Bhuneshwar Sahu
2. Ku. Chancal Sahu, aged about 1 year, D/o Bhuneshwar Sahu, being minor through her natural guardian mother Smt. Parwati Sahu.

Both R/o at present in village Karmandi, Thana Aarang, Tahsil Aarang,
Civil and Revenue District Raipur (C.G.)

... Non-applicants

For Applicant	:	Mr. Y.C. Sharma, Advocate.
For Non-applicants	:	Mr. C.R. Sahu, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09/02/2017

1. The present Criminal Revision under Section 19(4) of the Family Courts Act, 1984, has been preferred by the Applicant against the order dated 18.12.2015 passed by First Additional Principal Judge, Family court, Raipur, in Criminal Case No. 269 of 2015.
2. Vide impugned order dated 18.12.2015, 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.3000/- to Non-applicant No.1/wife and Rs.2000/- to Non-applicant No.2/minor daughter as maintenance every month, totaling to Rs.5000/-.
3. Before entering into the merits of the case, it is reflected from the order-sheets as well as from the proceeding that the Applicant has been proceeded ex parte before the Court below and the impugned order is an ex parte order. The impugned order was passed on 18.12.2015 and the present criminal revision was filed on 3.2.2016 i.e., immediately within the period of limitation

prescribed for filing the revision before this Court and as such there was no delay on the part of the Applicant in the filing of the present criminal revision.

4. Counsel for the Applicant intends to challenge the impugned order on merits but the fact that he has been proceeded ex parte his defence could not be brought on record and therefore this Court would find it difficult to take cognizance of those documents which were not produced for evidence before the Court below. Since the impugned order is an ex parte order, the Applicant had a remedy under the provisions of CrPC for moving the same Court under Section 126(2) of CrPC, proviso of which specifically holds that:

“126. Procedure.— xxx xxx xxx

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte* and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.”

5. From the facts of the case, it appears that the Applicant has not tried to avail the said remedy but has straightaway rushed to this Court by preferring the present criminal revision against the impugned order. This Court is reluctant to entertain the present criminal revision.

6. Meanwhile, Counsel for the Applicant, on a query being put to him as to whether the order dated 18.12.2015 has been complied with or not, makes a statement that the Applicant has made payment for about 6-7 months and there is a deficit of about five months amount to be paid to the Non-applicants.

7. At this juncture, without entering into the merits of the case, this Court is of the opinion that ends of justice would meet, if subject to the Applicant making the entire amount of maintenance payable till date as awarded by the Court below treating the said amount to be an interim maintenance, shall file an application under Section 126(2) of CrPC before the Court below

explaining the reasons of his non-appearance before the Court below seeking setting aside of the ex parte order. If the same is found suitable and satisfactory, the Court below shall entertain the same and shall proceed further with the matter and decide the claim of the Applicant afresh taking into consideration the fresh evidence which would be brought on record.

8. Needless to mention that the Non-applicants would also have a liberty to adduce any fresh evidence, if they so desire.

9. Meanwhile, as ordered earlier, pending the application before the Court below, the present Applicant shall continue to pay the maintenance as awarded by the Court below as an interim maintenance till the case is finally decided.

10. With the aforesaid observations, the impugned order stands quashed for the limited purpose, subject to compliance of the conditions enumerated herein above.

11. In view above, the present Criminal Revision is allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge