

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 104 of 2017

Mordhwaj, S/o. Sahdev Dadsena, Aged About 30 Years, Caste- Kalar, R/o. Village Ramhepur, Police Station- Lormi, Present Address- Office Sub Sanchalak Agriculture Balrampur, District- Balrampur, Chhattisgarh.

---- Applicant

Versus

1. Smt. Rajni Jaiswal, W/o. Mordhwaj Dadsena, Aged About 25 Years, Caste Kalar.
2. Minor Aryan Jaiswal, D/o. Mordhwaj Dadsena, Aged About 3 Years, Natural Guardian Of Mother Smt. Rajni Jaiswal, Caste Kalar.

Both R/o. Village Katghora, Police Station & Tahsil- Katghora, District- Korba, Chhattisgarh.

---- Respondents

For Applicant : Mr. Vikas Pandey, Advocate

For Respondents : Mr. Dheerendra Pandey, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

09.10.2017

Heard

1. The present revision is against the order dated 11.11.2016 passed by the Family Court Korba, District Korba (C.G.) in M.J.C. No.157/2014 wherein an application filed by the applicant under Section 126(2) of Cr.P.C. has been dismissed.
2. Learned counsel for the applicant would submit that no notice was served to the applicant in his office of the original application moved by the wife & children under Section 125 of Cr.P.C. It is contended that the applicant was working in Karyalay Krishi Balrampur whereas the notice was served on the Senior Krishi Vikas Adhikari Balrampur, therefore, notice was not properly served and the applicant could not be heard.
3. Perused the record of the Court below, which would show that the order under Section 125 of Cr.P.C was passed on 10.10.2014 in

M.J.C. No.58/2014. Perusal of the record of original M.J.C. No.58/2014 would further show that two acknowledgement are attached wherein the address is shown to be of Senior Krishi Vistar Adhikari Balrampur. In the said acknowledgement the seal of the office is also appended. It is not in dispute that the applicant is working in the Agriculture Department at Balrampur and the statement recorded in M.C.J. No.157/2014, which is an application to set aside the exparte order, would show that during the cross-examination it came to the knowledge of the family members i.e. brother-in-law of the applicant that the order for maintenance of Rs.5000/- has been passed against the applicant. There is no documentary evidence on record except to the oral submission that the applicant was working at Agriculture Office, Balrampur not in the Senior Agriculture Office Balrampur. There is no evidence to this fact also that both the office were separate and what was the place of posting of the applicant and only the bald statement has been made. However, considering the fact that the applicant has preferred the application to set aside the exparte order on 12.12.2014 without much delay since the order for payment of maintenance was passed on 10.10.2014, taking into such factual background, in order to advance cause of justice on merit, I am inclined to give an opportunity of hearing to the applicant. Therefore, the exparte order dated 10.10.2014 is set aside subject to the condition that the applicant shall be obliged to pay the entire arrears of maintenance within a further period of two months from today to the respondent wife & children. It is further directed that thereafter the trial Court shall oblige to decide the application under Section 125 of Cr.P.C. within further period of six months from date of deposit of the money as aforesaid. It is made clear

that if the entire amount of arrears is not paid then the instant order of setting aside the exparte order shall lose its efficacy.

4. In the result, the criminal revision is allowed to the above extent.
5. The Registry is directed to send back the records of the Court below forthwith.

Certified copy, as per rules.

Sd/-
(Goutam Bhaduri)
Judge

Ashok