

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 964 of 2013

Milaku, S/o. Gulam, aged about 55 years, R/o. Village - Highgudapara
Keshlur, P.S. - Parpa, Revenue and Civil District – Bastar (C.G.)

---- Petitioner

Versus

1. Smt. Paro Bai, W/o. Milaku, aged about 45 years, R/o. Arandwal
Mundapara, Police Station – Kodanar, Revenue & Civil District –
Bastar (C.G.).
2. State of Chhattisgarh, Through : Collector, Bastar, Place Jagdalpur,
P.S. - Kotwali, Revenue and Civil District – Bastar (C.G.).

-----Respondents

For Petitioner	: Mr. P.K. Tulsyan, Advocate
For Respondent/State	: Mr. Lav Sharma, Panel Lawyer
For Respondent No.1	: None present though served.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

14/09/2017

Heard.

1. This petition under Section 482 of Cr.P.C. has been brought with
prayer to quash the impugned order dated 17.09.2013, passed by the
Sessions Judge, Bastar in Criminal Revision No.12/2013, upholding
the order dated 11.12.2012 passed by Judicial Magistrate First Class,
Jagdalpur, District - Bastar in M.J.C. No.13/2012.
2. Respondent No.1 filed an application under Section 125 of Cr.P.C.,
before the Court of Judicial Magistrate First Class, Jagdalpur.
Petitioner was arrayed as a non-applicant, who did not appear on the

notice served to him, hence the case was heard ex-parte and the order dated 14.05.2010 was passed by which maintenance of Rs.1500/- was ordered to be paid to respondent No.1 by the petitioner. Petitioner moved an application for setting aside the ex-parte order passed against him before the Court of Judicial Magistrate First Class, Jagdalpur, the same was rejected by order dated 11.12.2012 in M.J.C. No.13/2012. On challenging this order in Criminal Revision No.12/2013, the Sessions Judge has decided the petition on 17.09.2013 and dismissed the revision.

3. Counsel for the petitioner submits that the notice to the non-applicant/petitioner in the case was returned with note that receiver has refused to take notice, on the basis of which ex-parte proceeding was taken up and order of maintenance was passed. Hence, the petitioner deserves opportunity to contest the case, which may be granted to the petitioner.
4. Respondent No.2/State is formal party in this case.
5. Heard the counsel present and perused all the documents on record.
6. Perusal of the documents on record it appears that a notice was sent by registered post, which was returned with note of refusal. Thereafter, another notice was sent by registered post, which was again returned in the similar manner on the basis of which, the trial Court presumed the service of summons on the respondent and proceeded ex-parte.
7. Section 126 of Cr.P.C. provides for procedure. The proviso to Sub-section 2 of Section 126 of Cr.P.C. provides 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.

8. In the order dated 11.12.2012 of the Chief Judicial Magistrate, Jagdalpur, it is mentioned petitioner made a statement in the application for setting aside ex-parte order that after passing the order dated 14.05.2010, he received the notice of original case on 04.09.2010, then consulted his counsel for filing of application for setting-aside of the ex-parte order, which is an unreasonable explanation. It appears that satisfaction recorded by the trial Court is in accordance with the proviso to sub-Section 2 of Section 126 of Cr.P.C. in rejecting the application for setting aside ex-parte order, which has been confirmed by the revisional Court. Hence this petition is without any substance and it is dismissed accordingly at the motion stage.

Sd/-
(Rajendra Chandra Singh Samant)
Judge