

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO. 265 OF 2017

Sohil Sharma, S/o Shri Ramlubhaya Sharma, aged about 28 years, R/o Station Road, Near Gurudwara, Punjabi Para, Mahasamund, Tahsil and District Mahasamund (C.G.), office address Technician, C.P.L. Unit No. 503 Signal Unit Ayangar, New Delhi (NCR)

... Applicant

Versus

1. Smt. Neha Sharma, W/o Sohil Sharma, aged about 26 years.
2. Athrav Sharma, S/o Sohil Sharma, aged about 4 years, through his natural guardian/mother namely Neha Sharma, W/o Sohil Sharma, aged about 26 years.

Both above are R/o C/o Late Rajkumar Prabhakar, behind Khursipar Police Station, Bhilai, District Durg (C.G.)

... Non-applicants

For Applicant : Mr. Manoj Paranjpe, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/03/2017

1. Challenge in the present criminal revision is to the order dated 17.2.2017 passed by the Illrd Additional Principal Judge, Family Court, Durg, in Misc. Criminal Case No. 702 of 2016.
2. Vide impugned order dated 17.2.2017, the Court below in a proceeding under Section 126 of CrPC, has rejected the application maintaining the earlier order passed under Section 125 of CrPC on 30.5.2016.
3. Relevant facts for consideration are that the Non-applicants in the instant case had filed an application under Section 125 of CrPC before the Court below, which was registered as Misc. Criminal Case No. 1234 of 2015 which stood decided on 30.5.2016, whereby the application under Section 125 of CrPC was allowed and it was ordered that the present Applicant shall pay the monthly maintenance of Rs.6000/- to Non-applicant No.1 and Rs.4000/- to Non-applicant No.2, totaling to Rs.10,000/-.

4. It is pertinent to mention at this juncture that the said order dated 30.5.2016 was an ex parte order.

5. It is a case where the contention of the Applicant was that the notice in the said proceeding was not at all issued or served upon him and therefore the proceeding went ex parte against him. Subsequently, an application under Section 126 of CrPC was moved by the present Applicant before the Court below against the said ex parte order. However, in the prayer clause of the application, the Applicant had sought for modification/interference with the quantum of maintenance amount awarded. The prayer was not happily worded, seeking setting aside of the ex parte order and permitting the Applicant to put forth his defence against the claim put forth by the wife. The Court below proceeded to entertain the application under Section 126 of CrPC treating it to be one under Section 127 of CrPC, as the prayer was for modification/interference of the order dated 30.5.2016.

6. At this juncture, Counsel for the Applicant makes a limited prayer that the impugned order may be set aside and the matter may be remitted back to the Court below so that the Applicant can apprise the Court in respect of the prayer for setting aside of the ex parte order by establishing that he has not been properly served with the notice issued and that if the application is allowed then he can also bring forth his defence before the Court below so far as the consideration of the amount of maintenance is concerned to the Non-applicants.

7. Considering the finding which has been given by the Court below, it appears that the Court below has proceeded with the matter treating it to be one under Section 127 of CrPC and that the same could not have been effectively considered in the absence of any defence and evidence which could have been adduced by the present Applicant.

8. The prayer in fact by the Counsel for the Applicant appears to be that of setting aside of the ex parte order, but it was not happily worded and the Court below took it to be an application under Section 127 of CrPC and decided the same.

9. Without further going into the merits of the case, this Court is inclined to accept the contention of the Applicant and allows the criminal revision by setting aside the order dated 17.2.2017. The matter is remitted back to the Court below, with a direction that the Court below may treat the application under Section 126 of CrPC to be one under sub-section (2) of Section 126 of CrPC treating it to be an application for setting aside the ex parte order, and then proceed and decide the case, rather than treating it to be an application under Section 127 of CrPC.

10. Meanwhile, it is directed that the Petitioner shall continue to comply with the order dated 30.5.2016 as long as the matter under Section 126 of CrPC is pending consideration before the Court below.

11. With the aforesaid observation, the criminal revision is allowed.

Sd/-
(P. Sam Koshy)
Judge