

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.120 of 2017**

Arun Pradhan, son of Shitipati Pradhan, aged about 40 years, Caste Kolta, resident of Village Mohka, resident of Village Mohka, Post Singhanpur, Police Station and Tahsil Basna, District Mahasamund, Chhattisgarh

---- **Applicant**

versus

Smt. Pushpa Pradhan, wife of Arun Pradhan, aged about 30 years, at present resident of Lanti, Post Paikin, Police Station and Tahsil Saraipali, District Mahasamund, Chhattisgarh

--- **Respondent**

For Applicant	:	Shri P.P. Sahu, Advocate
For Respondent	:	Shri R.S. Patel, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board**3.1.2018**

1. The instant is a revision under Section 19(4) of the Family Courts Act against the order dated 3.11.2016 passed by the Judge, Family Court, Mahasamund, Camp Court Saraipali in Miscellaneous Criminal Case No.91 of 2016 rejecting the application preferred by the Applicant under Section 126(2) of the Code of Criminal Procedure.
2. Facts of the case, in nutshell, are that the Respondent had filed an application under Section 125 of the Code of Criminal Procedure against the Applicant for grant of maintenance, which was decided *ex parte*. Since the Applicant was not having knowledge of said *ex parte* order passed against him, after getting knowledge, he filed an application under Section 126(2) of the Code of Criminal Procedure for setting aside the *ex parte* order dated 18.3.2016. The Family Court registered the application on 8.8.2016 mentioned that the application is within limitation, but, instead of deciding the same on merits, dismissed the application only on the ground of limitation vide order dated 3.11.2016. Hence, this revision on the ground that after hearing on the application on merits, ignoring that

at the time of registration of the said application, the Family Court had held that the application was within limitation, the Court committed gross illegality in dismissing the application only on the ground of limitation. At any point of time, no objection was raised with regard to limitation in filing the application under Section 126(2) of the Code of Criminal Procedure. The Family Court ought to have granted an opportunity to submit an application and proper explanation for condoning the delay if the Family Court came to the conclusion that the application was barred by limitation.

3. I have heard Learned Counsel appearing for the parties and perused the record with due care.
4. A bare perusal of the record shows that on 8.8.2016, an application under Section 126(2) of the Code of Criminal Procedure was filed by the Applicant. On 8.8.2016, it was mentioned in the order-sheet by the Trial Court that the said application is within limitation and thereafter, the application was registered. On 4.10.2016, reply of the said application was filed by the Respondent. The matter was posted for argument on 2.11.2016. After hearing the arguments, the matter was posted for orders on 3.11.2016. From perusal of the record, it is also clear that arguments had been heard on merits of the subject application and on 3.11.2016 the said application filed under Section 126(2) of the Code of Criminal Procedure was dismissed only on the ground of limitation.
5. Since at the time of registration of the application on 8.8.2016, it was found that the application was within limitation, on 2.11.2016 arguments were heard on merits. But, the matter was not decided on merits of the application and instead it was rejected only on the ground of limitation. No opportunity was afforded to the Applicant

on the ground of limitation. The Family Court ought to have granted an opportunity to the Applicant to file an appropriate application and submit proper explanation for condoning the delay if the Family Court came to the conclusion that the application was barred by limitation. Thus, the finding of the Family Court is *prima facie* perverse.

6. Resultantly, the revision is allowed and the impugned order dated 3.11.2016 passed by the Family Court is set aside. The matter is remanded to the Family Court with a direction that the Applicant shall be afforded a sufficient opportunity to file an appropriate application and submit proper explanation for condonation of delay in filing the application under Section 126(2) of the Code of Criminal Procedure. The parties are directed to appear before the Family Court on 28.2.2018. The aforesaid application for condonation of delay, if filed shall be decided within a period of one month from the date of its filing. If the delay is condoned, the application of the Applicant under Section 126(2) of the Code of Criminal Procedure filed before the Family Court for setting aside the *ex parte* order of maintenance dated 18.3.2016 passed against him shall be decided afresh on merits in accordance with law within a period of two months from the date of order condoning the delay.
7. Record of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(**Arvind Singh Chandel**)
Judge