

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.628 of 2018**

Surendra Kumar Yadav, S/o Basant Yadav, aged about 30 years, R/o Bhotha, P.O. Puri, Tahsil Charama, District North Bastar Kanker, Chhattisgarh

---- Applicant

versus

1. Gayatri Devi Yadav, W/o Surendra Yadav, aged about 26 years,
2. Hardik Yadav (minor), S/o Surendra Yadav, aged about 9 months,

Both R/o Village Bhotha, P.O. Puri, Tahsil Charama, District North Bastar Kanker, Chhattisgarh, Current Residence : Village and P.O. Jaisakarra, Station and Tahsil Charama, District North Bastar Kanker, Chhattisgarh

--- Respondents

For Applicant	:	Ms. K. Tripti Rao, Advocate
For Respondents	:	Shri Amit Kumar Sahu, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

19.3.2019

1. This revision has been filed against the order dated 4.5.2018 passed by the Family Court, Kanker in M.Cr.C. No.15 of 2018, whereby the Family Court has rejected the application under Section 126(2) Cr.P.C. submitted by the Applicant herein.
2. Facts of the case are that Respondent No.1 is legally wedded wife of the Applicant. Their marriage was solemnised on 9.5.2016. From their wedlock Respondent No.2 took birth on 9.2.2017. On 31.10.2017 the Respondents filed an application under Section 125 Cr.P.C. against the Applicant for grant of maintenance. Since the Applicant did not appear before the Family Court, after recording of *ex parte* evidence of the Respondents, vide order

dated 29.1.2018 passed in M.Cr.C. No.69 of 2017, the Family Court allowed the application under Section 125 Cr.P.C. and granted monthly maintenance of Rs.5,000 for each of the Respondents total Rs.10,000. Thereafter, on 23.2.2018, an application under Section 126(2) Cr.P.C. has been preferred before the Family Court by the Applicant on the ground that in M.Cr.C. No.69 of 2017 the Applicant has not been served personally for his appearance for any date. In spite of that, the Family Court proceeded *ex parte* against the Applicant. A reply of said application was filed by the Respondents. After hearing both the parties, vide the impugned order dated 4.5.2018, the Family Court rejected the application of the Applicant. Hence, this revision has been filed by the Applicant.

3. Learned Counsel appearing for the Applicant submits that the Family Court ought to have seen that the report of summon according to which summon was served on 16.11.2017 does not tell that on whom the summon was served. The Court below also ought to have examined the person who served the summon to the Applicant. There is nothing on record to show that any of the summon or notice has been served personally to the Applicant. Therefore, it is not established that the Applicant willfully committed negligence in appearing before the Family Court or willfully avoided the service of summon.
4. Learned Counsel appearing for the Respondents supported the impugned order of the Family Court.
5. I have heard Learned Counsel appearing for the parties and perused the record minutely.

6. Perusal of the record of M.Cr.C. No.69 of 2017 shows that on 2.11.2017 case was registered and order was passed for issuance of notice for appearance of the Applicant on 24.11.2017. From order-sheet dated 6.12.2017, it is clear that on 9.12.2017, this case was put up before National Lok Adalat but none of both the parties appeared before the National Lok Adalat. On 5.1.2018, the Family Court proceeded *ex parte* against the Applicant on the ground that a registered notice was served to the Applicant on 16.11.2017 and he was also served a notice of National Lok Adalat for his appearance on 9.12.2017, but he did not appear. In the notice of the National Lok Adalat issued to the Applicant, there is an entry of service of notice to the Applicant and it also contains signature of Surendra Yadav (the Applicant). But, before the Family Court, it was the averment of the Applicant that the signature put up in the notice is not his signature. Therefore, the Family Court ought to have examined the person who served the notice, but the Family Court did not do so. For the sake of argument even if it is accepted that the signature put up in the notice of National Lok Adalat was signature of the Applicant, from perusal of the proforma of the said notice it is not clear that Respondent No.1/wife had filed an application under Section 125 Cr.P.C. Therefore, it is not established that the Applicant was having knowledge of pendency of an application under Section 125 Cr.P.C. against him before the Family Court.
7. The report submitted by the Post Master only shows that concerned article was delivered on 16.11.2017. It does not show on whom the delivery of article was made. Since the Applicant categorically stated that he was not delivered, in this condition, the

Family Court ought to have examined the concerned Postman regarding delivery of summon or notice. But, the Family Court did not do so.

8. From the above, it is established that the Family Court should have examined the witnesses on the point of service of notice of National Lok Adalat and service of summon/notice through registered post, but the Family Court did not do so. Therefore, the impugned order of the Family Court is perverse.
9. Consequently, the revision is allowed. The impugned order dated 4.5.2018 passed by the Family Court is set aside. It is directed that the application under Section 125 Cr.P.C. shall be decided afresh after giving opportunity of hearing to the Applicant/husband in accordance with law.
10. 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