

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1171 of 2019**

- Jai Prasad S/o Tabjo aged 65 years, Occupation Retd. SECL Officer, R/o Mukundpur, Post Lakhanpur, District Surguja Chhattisgarh.

---- Applicant**Versus**

- Smt. Rampati, W/o Shri Jaiprasad, aged 60 years, R/o Latori, P.S. Lakhanpur, District Surguja, Chhattisgarh.

----Respondent

For Applicant	: Shri Nishi Kant Sinha, Advocate
For Respondent	: None

Hon'ble Smt. Justice Rajani Dubey**Order On Board****24.9.2019**

1. Heard on admission.
2. This revision is directed against the order dated 29.8.2019, passed by the Judge, Family Court, Ambikapur, District Surguja (CG) in Misc. Civil Case No. 7/2019, whereby the learned trial Judge has restored the Misc. Cr. Case No. 92/2018 to its original number which was dismissed in default on 6.12.2018.
3. Learned counsel for the applicant submits that this order is contrary to law. The proceedings under Section 125 Cr.P.C. is registered as a criminal case and the learned trial court has restored the criminal case according to Civil Procedure Code. The learned trial Court without having jurisdiction to do so under the Family Courts Act,

1984, therefore, the order dated 29.8.2019 passed in Misc. Civil Suit No.7/2019 is liable to be set aside.

4. I have heard learned counsel for the applicant and perused order impugned.
 5. Perusal of the order would show that the respondent/wife has filed an application under Section 125 Cr.P.C. before the Family Court for grant of maintenance which was dismissed in default as the respondent could not appear due to her illness on that date fixed for her evidence.
 6. Section 7 of the Family Courts Act, 1984 reads as under :
- “7. Jurisdiction-** (1) Subject to the other provisions of this Act, a Family Court shall-
- (a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the *Explanation*; and
 - (b) be deemed, for the purposes of exercising such jurisdiction under such law, to be district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.
- (2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-
- (a) the Jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and
 - (b) such other jurisdiction as may be conferred on it by any other enactment.”

It is clear from Section 2 (a) that the Family Court has jurisdiction like Magistrate of first class under Chapter IX of the Cr.P.C. It is held by Hon'ble the Apex Court in the matter of **Vijay Kumar Prasad Vs. State of Bihar and Others, (2004) 5 SCC 196** in para 14 as under :

1. “14. The basic distinction between Section 488 of the old Code and Section 126 of the Code is that Section 126 has essentially enlarged the venue of proceedings for maintenance so as to move the place where the wife may be residing on the date of application. The change was thought necessary because of certain observations by the Law Commission, taking note of the fact that often deserted wives are compelled to live with their relatives far away from the place where the husband and wife last resided together. As noted by this Court in several cases, proceedings under Section 125 of the Code are of civil nature.”
7. Now the question for consideration is whether an application filed under Section 125 Cr.P.C. dismissed for default could be restored ?
8. Initially, the proceedings under Section 125 Cr.P.C. are of **civil nature**. Such an order of dismissal did not amount to a final order and Magistrate had jurisdiction to restore the said application which was dismissed in default, if sufficient grounds are shown, for effective adjudication of the case on merits. Therefore, the order passed by the learned Judge of the Family Court for restoration of the Misc. Cr. Case No.92/2018, which was dismissed in default on 6.12.2018 is just and proper and requires no interference by this Court.

9. Accordingly, the revision is dismissed at the motion stage itself without issuing notice to the respondent. However, it is directed that the trial court shall dispose of the case with cooperation of the parties as early as possible preferably within a period of six months from the next date of hearing.

Sd/

(Rajani Dubey)

JUDGE

sunita