

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 787 of 2019

1. Smt. Kala Kurre W/o Vyas Narayan Kurre, Aged About 49 Years, (mentioned as 47 in the impugned order), R/o Gram Bhansoj, Thana Aarang, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. Prashant Kurre S/o Vyas Narayan Kurre, Aged About 13 Years (Minor) mentioned as 11 years in the impugned order) Through Valli Smt. Kala Kurre, Wife of Vyas Narayan Kurre, R/o Gram Bhansoj, Thana Aarang, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Petitioners

Versus

- Vyas Narayan Kurre S/o Hariram Kurrey, Aged About 65 Years, R/o Village Gangajal, Police Station and Tehsil Shivrinarayan, District Janjgir-Champa, Hal Mukam Ginni Petrol Pump Ke Pass, Akaltara Road, Shriram Colony, Janjgir, District Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

----Respondent

For Petitioners –Ms. Sameeksha Gupta and Mr. Dhiraj Kumar Wankhede,
Advocates.

For Respondent – Mr. Ravindra Sharma, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

19-03-2020

1. The petitioners have challenged the order dated 11-06-2019 passed by the learned Family Court in MJC No.793/2017 by allowing the application filed by the respondent under Section 126(2) of the Cr.P.C. and setting aside the ex-parte order granting injunction in favour of the petitioners.

2. It is submitted that the impugned order passed is erroneous and against the provisions of law. Firstly, the application for setting aside the ex-parte order was filed beyond limitation. The application was filed by the respondent after sufficient delay on 20-03-2017 along with application under Section 5 of the Limitation Act and the delay in filing that application was erroneously condoned by the learned Family Court.

It is submitted that the observation made by learned Family Court in paragraph 19 of the impugned order has relied on the Judgment of Hon'ble the

Supreme Court in case of **Puwada Venkateswara Rao vs Chidamana Venkata Ramana**, 1976 AIR 869 and held that before passing order over ex-parte proceeding the postman was not examined with respect to the service of process, therefore, on this basis the application was allowed. It is submitted that the learned Family Court has made incorrect appreciation of the judgment of Hon'ble the Supreme Court. In case of **Puwada Venkateswara Rao** (supra), the Hon'ble the Supreme Court has observed in paragraph 9 that letter sent by registered post with the endorsement "refused" on the cover can be presumed to be served. Therefore, it is a correct statement of the law as the presumption under Section 114 of the Evidence Act is available on the point of delay in filing the application.

Relying on the judgment of Hon'ble the Supreme Court in the matter of **Mahant Bikram Dass Chela Vs. Financial Commissioner, Revenue, Punjab, Chandigarh and others**, (1977) 4 SCC 69 and the judgment of Punjab and Haryana High Court, Full Bench in the matter of **Joginder Singh Surmukh Singh Vs. Smt. Balkaran Kaur**, 1972 CRI. L.J. 93, it is submitted that the delay has been erroneously condoned by the learned Family Court. Hence, the impugned order is not sustainable which may be dismissed.

3. Learned counsel for the respondent submits that the respondent was not duly served with notice with respect to the application filed by the applicant/petitioner under Section 125 of the Cr.P.C. The learned Family Court has not committed any error in holding that the postman was necessary to be examined regarding the service made upon the respondent. The respondent has ground to contest the application, as he pleads that the applicant No.1/petitioner No.1 is not legally wedded wife and also the applicant No.2/petitioner No.2 is not his child, therefore, he has to be given an opportunity to contest the claim made by the applicants side. Therefore, the impugned order does not suffer from any infirmity.

4. Heard learned counsel for the parties and perused the documents.

5. The point argued that the application was delayed and beyond limitation is considered at first. The learned Family Court has heard and decided the application filed by respondent under Section 5 of the Limitation Act on 14-08-2018. The said order has not been challenged by the applicants/petitioners side in any revision petition as the remedy was available to the applicants/petitioners. The applicants side was well aware of the passing of this order because it was passed bi-parte. Therefore, the order of learned the Family Court condoning the delay cannot be challenged at this stage in this revision petition. An enquiry was made by the learned Family Court on the application filed by the respondent Under Section 126(2) of the Cr.P.C. The respondent has made statement in support of his application and in cross-examination he has clearly denied that he had made any refusal to receive the process issued upon him.

As it appears that the respondent was ordered to be served through registered post by the learned Family Court in the main proceeding under Section 125 of the Cr.P.C., although the proceeding under Section 125 of the Cr.P.C. is of quasi civil nature, but there is no such specific provision present in the Code of Criminal Procedure to hold that the Court is vested with the powers of Civil Procedure Code, while dealing with the application under Section 125 of the Cr.P.C. In Chapter VI of the Cr.P.C. Section 62 provides how summons shall be served and there is no provision in case the person on whom notice is to be served cannot be found, then according to the provision under Section 64 of the Cr.P.C. notice can be served upon some other adult member of family and further there is provision under Section 65 of the Cr.P.C. that if no service of summon could be made upon the person concerned in accordance with foregoing provisions, then serving officer shall affix one of the duplicates of the same to some conspicuous part of the house in which the

person summoned ordinarily resides, and thereupon the Court, after making such inquiries as it thinks fit, may declare that the summons has been duly served. The only provision under Cr.P.C. by which summons can be served by post is Section 69 and that too with respect to service upon a witness and not to service upon a party.

On perusal of the provisions of the Cr.P.C. as mentioned hereinabove, it would be found that there is no difference of procedure in a civil proceeding and in a criminal proceeding. Although, the proceeding under Section 125 of the Cr.P.C. is a quasi civil proceeding, but even then it being a procedure in Code of Criminal Procedure it is a criminal procedure. There being no express provision with respect to the service of summon through registry on a party in Cr.P.C., therefore, in any proceeding it cannot be said that the said service of process through registered post which was returned with note of refusal can be regarded as proper service of process. Hence, for these reasons I am of this view that the impugned order does not suffer from any infirmity. Hence, this revision petition is without any substance which is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
Judge