

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 866 of 2017

- Ku. Manisha, D/o Murli Yadav, Aged About 20 Years, On Behalf Of Through Her Mother Kaila Bai R/o Village Barpali, P.S. Urga, Tahsil Kartala, District-Korba, Chhattisgarh, Chhattisgarh

---- Petitioner

Versus

- Murlilal Yadav, S/o Ahibaran, Aged About 43 Years, R/o Village Barpali P.S. Urga, Tahsil Kartala, District-Korba, Chhattisgarh.

---- Respondent

For applicant	:	Mrs. Usha Chandrakar, Advocate.
For Respondent	:	Mr. Malay Shrivastava, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

12/02/2020

1. This revision petition has been brought being aggrieved by the order dated 25.4.2017 passed by the Family Court, Korba thereby rejecting the application filed by the applicant herein under Order 9 Rule 9 of the Code of Civil Procedure, 1908 (for short 'CPC').
2. It is submitted that an order of maintenance under Section 125 of CrPC has been passed in favour of the applicant by the Family Court, Korba. The applicant filed an application under Section 125 (3) of CrPC for recovery of maintenance amount, which came to be registered as MJC No.14/2008. The said application was dismissed by the Court below vide order dated 22.11.2016 on account of non-appearance of the applicant. Thereafter the applicant filed an application under Order 9 Rule 9 read with Section 151 of CPC praying for restoration of MJC No.14/2008. The trial Court without appreciating the principles of law in this respect has rejected the application for restoration by holding that there is no provision for restoration, of the petition filed under Section 125 (3) of CrPC. Since the impugned order

passed by the Court below is bad in law, therefore, the same is liable to be set aside by this Court in exercise of its revisional jurisdiction. He places his reliance on the decision of Delhi High Court in the matter of Jagmohan Arora v. Saroj Arora, reported in 2011(3) JCC 2064.

3. Learned counsel for respondent opposes the arguments advanced by the counsel for applicant and submits that there is no specific provision under the Code of Criminal Procedure enabling restoration of proceeding which has been dismissed for want of prosecution. Further, the application was filed under the provisions of the CPC, which could not have been entertained by the Court below. In these circumstances, the dismissal is proper which needs no interference.
4. I have heard both the parties and perused the documents filed along with petition.
5. Admittedly, there is no provision in the Cr.P.C. dealing with the restoration of a dismissed execution petition filed under Section 125 (3) of CrPC. However, it is now well settled that the proceedings under Section 125 of CrPC are regarded as *quasi civil* and *quasi criminal* in nature. The procedure that is prescribed under Section 126 of the CrPC is also applicable to civil cases and being so, in absence of any specific provision, the Court below could have entertained the application for restoration filed before it. Although an objection has been raised from the side of the respondent that the order passed by the Court below is with respect to civil provision, therefore, the criminal revision could not have been entertained, but the basic prayer made by the applicant is only for restoration of the proceeding filed under Section 125(3) of CrPC. Therefore, without referring to the provisions of the Civil Procedure Code, the basic prayer of the applicant has to be taken into consideration.
6. After over all consideration, I am of this view that the order of dismissal passed by the Court below on the restoration application filed by the applicant is liable to be set aside. Accordingly, this petition is allowed and the impugned order is set aside. The proceeding before the Court below under Section 125(3) of CrPC is restored to its original number. The parties are directed to appear before the concerned Court on

5th March, 2020.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha