

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1466 of 2019

- Samarth Awasthi S/o Late Santosh Awasthi, Aged About 36 Years, R/o Through Dr. Satyabhama Awasthi, W/o Late Santosh Awasthi, 14 Senior M.I.G., Nehru Nagar, Bilaspur, P. S. Civil Lines, Tahsil and District Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh

---- Petitioner

Versus

- Smt. Abhilasha Awasthi W/o Samarth Awasthi, Aged About 33 Years, R/o Near M.I.G. -56, Nehru Nagar, Bilaspur, P. S. Civil Lines, Tahsil and District Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh

--- Respondent

For Petitioner – Shri Ravindra Agrawal, Advocate.

For Respondent – None, though she is served with notice.

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

24-02-2020

Heard.

1. This criminal revision has been brought being aggrieved by the order dated 17-10-2019 passed by the Addl. Principal Judge, Family Court Bilaspur dismissing the application filed by the petitioner under Section 126(2) of the Cr.P.C.

2. It is submitted that the petitioner had been prompt in giving appearance before the learned Court below. However, on the date fixed for hearing on 12-02-2019 he could not give appearance for a reasonable cause, that was this, that he could not get reservation in train for coming from Pune to Bilaspur. An application was filed by the friend of the petitioner, Alok Soni mentioning the same cause, which is mentioned in the order sheet, even then that was not considered and the ex-parte proceeding was ordered against the petitioner.

The ex-parte order under Section 125 of the Cr.P.C. that was passed in MJC No.961/2017 was challenged by filing a separate application under Section 126 (2) of the Cr.P.C. in MJC No.64/2019. The learned Family Court has without appreciating the reasons mentioned for non-appearance of the applicant has

dismissed the application arbitrarily and erroneously which is liable to be set aside.

3. The respondent side is not represented.

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

5. The only reason that was needed to be considered whether the petitioner has made out a good cause for his non-appearance on the date of hearing. The cause mentioned by the petitioner that he could not get reservation in train for coming to Bilaspur on the date of hearing is supported with affidavit and that statement of the affidavit has not been rebutted by respondent side, therefore, the dismissal of the application under Section 126(2) of the Cr.P.C. mentioning the cause that the application filed on 12-02-2019 by the petitioner was not signed, is not a good reason for dismissing the application. This fact has to be noted that the application was presented by friend of the petitioner and as the petitioner himself was not present, therefore there was no occasion for him to sign the application. On the other hand, the main reason mentioned why he could not appear has not been at all appreciated. Therefore, the impugned order suffers from infirmity which is liable to be set aside.

6. Consequently, this criminal revision is allowed at the motion stage. The impugned order dated 17-10-2019 in MJC No. 64/2019 is hereby set aside and the order in MJC No.961/2017 dated 13-02-2019 is also set aside. The learned Family Court is directed to give opportunity to the petitioner for adducing evidence and then to proceed to dispose off the application under Section 125 of the Cr.P.C on merits and in accordance with law.

7. The petitioner is directed to give his appearance before the Court below on 16th of March, 2020.

8. The petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge