

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**RPFAM NO. 9 OF 2022**

***Santosh Kumar Satpathy***

....

***Petitioner***

Mr. P.K. Khuntia, Advocate

-versus-

***Swastika Bhuyan and another***

....

***Opp. Parties***

Mr. Gopal Krushna Mohanty,  
Advocate

**CORAM:**  
**JUSTICE K.R. MOHAPATRA**

**ORDER**  
**07.04.2022**

**Order No.**

- 5.
1. This matter is taken up through hybrid mode.
  2. This RPFAM has been filed assailing the order dated 17<sup>th</sup> December, 2021 (Annexure-3) passed by learned Judge, Family Court, Cuttack in Criminal Proceeding No.67 of 2017, whereby he dismissed the application filed by the Petitioner under Section 126(2) Cr.P.C.
  3. Mr. Khuntia, learned counsel for the Petitioner submits that Criminal Proceeding No. 560 of 2012 filed under Section 125 Cr.P.C. was posted to 16<sup>th</sup> January, 2014 for filing of the show cause. On that date, the matter was adjourned to 19<sup>th</sup> September, 2015 for filing of the show cause. But, learned Judge, Family Court, Cuttack by setting him ex parte proceeded with the matter and passed the final order directing the Petitioner to pay maintenance at the rate of Rs.5,000/- per month to the Opposite Party No.1-Wife and Rs.2,000/- per month to the Opposite Party No.2-Son from the date of filing of the application i.e. from 16<sup>th</sup> July, 2012. It was also directed that the Petitioner shall pay arrear maintenance. It is his submission that when the matter was posted for filing of the show cause, learned Judge, Family Court,

Cuttack committed an error in setting the Petitioner ex parte and proceeding with the matter.

4. Mr. Mohanty, learned counsel for the Opposite Parties vehemently objected to the same and submitted that learned Judge, Family Court, Cuttack at paragraph-4 of the impugned order has vividly discussed the circumstance under which the Petitioner was set ex parte and the final order was passed. It is his submission that on 16<sup>th</sup> January, 2014, the Petitioner filed his show cause in Criminal Proceeding No. 560 of 2012. But, taking advantage of inadvertent mistake in the order dated 10<sup>th</sup> September, 2015 posting the case for filing of the show cause, neither the Petitioner paid interim maintenance nor appeared to contest the case. Accordingly, he was set ex parte. It appears from the impugned order that the Petitioner did not appear on 11<sup>th</sup> March, 2014, 18<sup>th</sup> April, 2014, 8<sup>th</sup> July, 2014, 24<sup>th</sup> July, 2014, 24<sup>th</sup> September, 2014, 19<sup>th</sup> December, 2014, 24<sup>th</sup> March, 2015 and 23<sup>rd</sup> June, 2015. Thus, he submits that learned Judge, Family Court, Cuttack looking at the conduct of the Petitioner has committed no error in dismissing the petition under Section 126(2) Cr.P.C. He further submits that the Petitioner has not yet paid the arrear maintenance, which will be more than Rs.8,12,000/- out of which he has only paid Rs.75,000/-. Hence, this RPFAM should not be entertained and is liable to be dismissed.

5. Taking into consideration the fact that the Petitioner has not contested the case on merit, this Court feels that an opportunity should be given to the Petitioner to show his bona fide by contesting the criminal proceeding diligently. But, at the same time, the Court is conscious of the fact that the Petitioner is neither paying current maintenance nor arrear maintenance to the Opposite Parties.

6. In that view of the matter and in order to protect the interest of Opposite Parties, this Court feels that the Petitioner should pay a substantial amount to the Opposite Parties for their sustenance.

7. In view of the above, the impugned order under Annexure-3 as well as the *ex parte* order passed in Criminal Proceeding No. 56 of 2012 are set aside and the matter is remitted back to the learned Judge, Family Court, Cuttack for fresh adjudication of Criminal Proceeding No. 560 of 2012 subject to payment of a sum of Rs.3,50,000/- (Rupees three lakh fifty thousand only) to the Opposite Parties within a period of one month hence.

8. It is made clear that the Petitioner shall go on paying the monthly maintenance as awarded in Criminal Proceeding No.560 of 2012, which shall be subject to the result of the said criminal proceeding. It is also made clear that non-compliance of any of the conditions, stated above, shall entail the learned Judge, Family Court, Cuttack to restore the order already passed in Criminal Proceeding No.560 of 2012.

8. With the aforesaid observation and direction, the RPFAM is disposed of.

Urgent certified copy of this order be granted on proper application.

**(K.R. Mohapatra)**  
**Judge**

bks