

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No.241 of 2016

Seema Sethi @ Karan

.....

Petitioner

Mrs. M. Kanungo, Advocate

-versus-

Rajesh Karan

....

Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

Order No.

ORDER
13.10.2022

11. 1. This matter is taken up through hybrid mode.
2. Petitioner in this RPFAM seeks to assail the order dated 8th September, 2016 (Annexure-5) passed by learned Judge Family Court, Balasore in Misc. Case No.231 of 2015 (arising out of Cr.P No.75 of 2010) refusing to restore the proceeding under Section 125 Cr.P.C., which was dismissed for default on 25th July, 2014.
3. Mrs. Kanungo, learned counsel submits that the Petitioner had filed the petition under Section 125 Cr.P.C. seeking maintenance from her husband-Opposite Party. The petition under Section 125 Cr.P.C. was filed on 5th February, 2010. Since the Opposite Party did not appear he was set ex-parte on 7th January, 2011. Ultimately, on 25th July, 2014, the matter was posted for hearing on which date she could not appear before the Court, as she was suffering from Peptic Ulcer. The default on the part of the Petitioner was not

deliberate. Under compelling circumstances, she could not appear before the Family Court, as she was undergoing treatment from 22nd October, 2014 to 24th December, 2014. Learned Judge, Family Court disbelieving illness of the Petitioner rejected the Petition and refused to restore the petition under Section 125 Cr.P.C. In support of her case, she placed reliance on the decision in the case of **Smt. Aruna Kar Vs. Dr. Sarat Dash @ Nachhi**, reported in 1993 Cri.L.J. 1506, wherein it is held as under:-

“5. Keeping in view the benign provision in Section 125 enacted to in into economic condition of neglected wife and discarded divorcees and to save enumerated persons from vagrancy and destitution, Welfare laws must be so read as to be effective delivery systems of salutary objects sought to be served by the Legislature. When beneficiaries are weaker sections like destitution women, spirit of Art. 15(3) of the Constitution must be light meaning of Section 125 and its sister clauses and provisions must receive compassionate expansion of sense that the words used permit. Similar sentiment was expressed by the Apex Court in Bai Tahira v. Ali Hussain Fissalli Chothie and Anr. AIR 1979 SC 362.”

She therefore, prays for setting aside the impugned order under Annexure-5 and to direct learned trial Court to hear the petition under Section 125 Cr.P.C. on merit by restoring the same.

4. Upon hearing learned counsel for the Petitioner and on perusal of the impugned order, it appears that learned trial Court has discussed in detail the demeanour of the Petitioner in pursuing the petition under Section 125 Cr.P.C. Although medical certificates issued by Dr. D.K.Das Mohapatra were not marked as exhibits, but the Family Court considered the same. The certificates issued by Dr. Mohapatra disclosed that the Petitioner

was under treatment from 10th June, 2014 to 12th September, 2014. In the second certificate, it was stated that the Petitioner was ill from 22nd October, 2014 to 24th December, 2014 and in the third certificate it was shown that the Petitioner was ill from 25th December, 2014 to 26th March, 2015. On analysis of materials on record, the Family Court found that there is no explanation of the period from 13th September, 2014 to 21st October, 2014. Hence, he rejected the petition to restore the petition under Section 125 Cr.P.C.

5. Mrs. Kanungo, learned counsel submits that the Petitioner belongs to schedule caste community and due to the compelling circumstance she could not appear before learned Family Court to pursue her case. She also made submission that the petition under 125 Cr.P.C. cannot be dismissed for non-prosecution. Such a submission cannot be accepted, as the petition under Section 125 Cr.P.C. has to be pursued by the Petitioner and in absence of any prosecution, Family Court has no other option than to dismiss it for non-prosecution. However, on showing sufficient cause it can be restored to file. In the present case, the Petitioner failed to explain the period from 13th September, 2014 to 21st October, 2014. Thus, the petition for restoration in absence of sufficient cause for non-filing the petition for restoration at an earlier stage cannot be entertained. This Court, while exercising power under Section 401 CPC, should not substitute its own finding, in absence of any cogent material to interfere with the impugned order. Discussing materials on record learned Family Court has come to the conclusion. Further, in the meantime more than twelve

years have elapsed. Thus, this Court is not inclined to interfere with the same.

6. Accordingly, the RPFAM is dismissed being devoid of any merit. It is, however, made clear that if cause of action still survives, the Petitioner may file a fresh application under Section 125 Cr.P.C.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy

