

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM NO.122 of 2016

Subrat Kumar Tripathy

....

Petitioner

Mr. P. Mishra, Advocate

-versus-

Jayanti Tripathy and others

....

Opp. Parties

Mr. Mahes Das, Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

04.11.2022

Order No.

I.A. No.255 of 2022 & RPFAM NO.122 of 2016

6.
 1. This matter is taken up through hybrid mode.
 2. The IA has been filed for extension of interim order dated 3rd June, 2016 passed in Misc. Case No.164 of 2016.
 3. In course of hearing of the IA, this Court feels that merit of the case has to be gone into. Hence, on consent of learned counsel for the parties, the matter is taken up for final disposal.
 4. This RPFAM has been filed assailing the order dated 20th May, 2016 (Annexure-5) passed in Misc. Case No.5 of 2015 (arising out of Criminal Proceeding No.8 of 2014), whereby learned Judge, Family Court, Rourkela rejected an application under the proviso to Section 126 (2) Cr.P.C.
 5. Contention of learned counsel for the Petitioner is that during the period when the notice in Criminal Proceeding No.8 of 2014 filed under Section 125 Cr.P.C. is alleged to have been served on the Petitioner, he was not residing in the address given in the petition under Section 125 Cr.P.C. As the room was locked by his wife, the Opposite Party No.1, he was residing

elsewhere. Thus, the notice issued on the Petitioner in the petition under Section 125 Cr.P.C. could not have been served on him. He further submits that the Petitioner had filed Exts.1 to 8 to establish that he was not residing in the address given in the petition under Section 125 Cr.P.C. Learned counsel further submits that as the notice was not served on him, he could not know about the proceedings in Cr.P.No.8 of 2014 and participate in the hearing. As such, he was set ex-parte. Petitioner came to know about the order passed in the Criminal Proceeding No.8 of 2014 on 6th April, 2015 and applied for certified copy of the order passed in the petition under 125 Cr.P.C., which was made available to him on 21st May, 2015. On the very same day, he filed the petition under Section 126 (2) Cr.P.C. Learned Judge, Family Court, Rourkela disbelieved the same holding that the Petitioner did not disclose as to from which source he could know about the order passed in the petition under Section 125 Cr.P.C. and refused the prayer for condonation delay of nine months in filing the petition under Section 126 2) Cr.P.C. It is his submission that a party should be allowed to contest the proceeding and the Court should make an endeavour to pass order on merit giving opportunity of hearing. Since the Petitioner did not get opportunity of hearing, the impugned order as well as the order passed ex-parte directing to pay maintenance to the Opposite Parties is liable to be set aside.

6. Mr. Das, learned counsel for Opposite Parties vehemently objects to the same and submits that order sheets in the proceeding under Section 125 Cr.P.C., more particularly the order dated 10th March, 2014 clearly discloses that the notice issued on the Petitioner was served personally and he had signed

the AD. As such, it was treated to be sufficient. Since the Petitioner did not appear to contest the proceeding under Section 125 Cr.P.C., learned Judge, Family Court set him ex-parte and proceeded with the matter. He further submits that no reason has been assigned to condone the delay of nine months in filing the petition under Section 126(2) Cr.P.C. Hence, learned Judge, Family Court, Rourkela has committed no error in rejecting the petition under Section 126 (2) Cr.P.C.

7. Considering the rival contentions of parties and on perusal of record, it appears that in Criminal Proceeding No.8 of 2014 filed by the Opposite Parties under Section 125 Cr.P.C., notice in the proceeding was issued to the Petitioner in his residential address pursuant to order dated 20th January, 2014. Subsequently, Family Court vide its order dated 10th March, 2014, has observed as under:-

"Petitioner is present and files hazira. OP is absent. Notice sent to the OP by Regd. Post with AD back after personal service. The AD reveals the OP has received the notice personally. The OP neither appeared (sic) nor took any steps. The Petitioner has service sufficient affidavit taken up proof of service to held service sufficient. The OP has been received the notice in person. The service of notice against him is held sufficient and the OP is set ex parte. Put up on 21.03.2014 for ex parte hearing."

No material has been placed before this Court to establish that the Petitioner had not signed the AD of the notice issued through registered post. Although a plea has been taken by learned counsel for the Petitioner that he was not residing in the address during the relevant period as the Opposite Party No.1-Wife had locked his room, but the same is of no help to the Petitioner as he had signed on the AD letter of the registered notice, which he does not dispute. Further, along with the

petition under Section 126 (2) Cr.P.C., the Petitioner had filed an application under Section 5 of the Limitation Act explaining the condonation of delay. It is stated therein that he came to know about the ex parte order passed under Section 125 Cr.P.C. on 6th April, 2015 from reliable source, but he has not disclosed from which source he came to know about the order passed under Section 125 Cr.P.C. There is also no material to come to a conclusion that the ex parte order of maintenance came to his knowledge on 6th April, 2015 only and not before that. Thus, learned trial Court has not committed any error in dismissing the petition under Section 5 of the Limitation Act and consequentially the petition under Section 126 (2) Cr.P.C.

8. Accordingly, the RPFAM being devoid of any merit stands dismissed.

9. Interim order dated 3rd June, 2016 passed in Misc. Case No.164 of 2016 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge