

IN THE HIGH COURT OF ORISSA AT CUTTACK
RPFAM No. 50 OF 2019

Choudhury S.K. Mishra **Petitioner**
Mr. A. Mohanta, Advocate
-versus-
Rita Bihari @ Mishra and another **Opp. Parties**

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
24.11.2022

6.
 1. This matter is taken up through hybrid mode.
 2. The Petitioner in this RPFAM seeks to assail the order dated 27th November, 2013 passed in Criminal Proceeding No.430 of 2011, whereby entertaining an application for interim maintenance, learned Judge, Family Court, Cuttack, disposed of the criminal proceeding *ex parte*.
 3. In course of hearing, Mr. Mohanta, learned counsel for the Petitioner submits that in view of proviso to Section 126(2) Cr.P.C., the Petitioner before approaching this Court, should have file an application before learned Family Court to set aside the *ex parte* order. He, therefore, prays for withdrawal of the RPFAM seeking liberty to file an application under proviso to Section 126(2) Cr.P.C.
 4. In view such submission, this RPFAM is disposed of as withdrawn granting liberty to the Petitioner to file an application under proviso to Section 126(2) Cr.P.C. within a period of two weeks hence along with certified copy of this order and in that event, learned Judge, Family Court, Cuttack shall do well to

entertain the said application in accordance with law. While adjudicating the petition for condonation of delay, learned Judge, Family Court, Cuttack shall take into consideration the pendency of the RPFAM before this Court from 7th March, 2019 till date along with other grounds.

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

(K.R. Mohapatra)
Judge

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