

IN THE HIGH COURT OF ORISSA AT CUTTACK
RPFAM NO. 22 OF 2021

Santosh Kumar Das

.... ***Petitioner***
Mr. Achutananda Pattanaik,
Advocate

-versus-

Shantilata Das and others

.... ***Opp. Parties***

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
02.05.2022

5. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 24th December, 2020 passed by learned Judge, Family Court, Bhadrak in Cr.P. No. 104(A) of 2020, whereby he rejected an application filed by the Petitioner under Section 126(2) Cr.P.C.
3. Mr. Pattnaik, learned counsel for the Petitioner submits that the Opposite Parties filed Criminal Proceeding No. 46 of 2017 claiming maintenance under Section 125 Cr.P.C.. Although the Petitioner is serving as CRPF personnel and was posted at Baratunda in the district of Bargarh at the relevant time, but the notice in Criminal Proceeding No.46 of 2017 was intentionally sent at his village address, which was received by his father. As the Petitioner was serving outside, he could not know about the initiation and service of notice in Criminal Proceeding No. 46 of 2017 and contest the proceeding. As such, he was set ex parte and an ex parte judgment and order was passed on 4th September, 2019

directing the Petitioner to pay maintenance @ Rs.5,000/- per month to the Opposite Party No. 1 and Rs.3,000/- per month to each of the Opposite Party Nos.2 and 3 from the date of filing of the application, i.e. on 22nd March, 2017. It is his submission that when the Petitioner received the notice in Execution Cr.P. No. 305 of 2019, he came to know about the ex parte order of maintenance passed. Hence, he filed an application under Section 126(2) Cr.P.C., which was registered as Cr.P. No. 104(A) of 2020. Learned Judge, Family Court, Bhadrak without taking into consideration the fact that no notice was personally served on the Petitioner and that he was prevented by sufficient cause from appearing and contesting the petition filed under Section 125 Cr.P.C. has passed the impugned order holding that the Petitioner was aware of the said proceeding and the petition under Section 126(2) Cr.P.C. was itself barred by limitation. He, therefore, prays for setting aside the impugned order and to permit the Petitioner to contest the Criminal Proceeding No. 46 of 2017.

4. Upon hearing learned counsel for the Petitioner and on perusal of the record, it appears that notice in Criminal Proceeding No. 46 of 2017 filed under Section 125 Cr.P.C. was received by the father of the Petitioner. It is also apparent that although the petition under Section 126(2) Cr.P.C. was filed beyond the statutory period, i.e. within three months from the date of the order passed in a petition under Section 125 Cr.P.C., no application under Section 5 of the Limitation Act accompanying the said petition was filed. On perusal of the order passed in the petition under Section 125 Cr.P.C., it appears that learned Judge, Family Court, Bhadrak taking into consideration the materials available on record has directed the Petitioner to pay maintenance @ Rs.5,000/- per month

to the Opposite Party No.1 and Rs.3,000/- per month to each of Opposite Party Nos.2 and 3, which appears to be just and reasonable. In that view of the matter, I am not inclined to entertain the RPFAM, which is accordingly dismissed.

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

(K.R. Mohapatra)
Judge

bks

