

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM NO. 41 OF 2021

Binod Nayak

Petitioner

Mr. Arijeet Mishra, Advocate

-versus-

Smt. Neta Nayak and another

.... Opp. Party

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

07.07.2022

Order No.

3. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this RPFAM seeks to assail the order dated 16th January, 2015 passed in Crl. Misc. Case No.107 of 2014, whereby learned Judge, Family Court, Keonjhar allowed an application under Section 125 Cr.P.C. *ex parte* directing the Petitioner to pay a sum of Rs.3,000/- per month to each of Opposite Party Nos.1 and 2 from the date of application, i.e. from 1st December, 2014.
3. Mr. Mishra, learned counsel for the Petitioner submits that suppressing the order dated 14th August, 2013 passed by learned Addl. Sessions Judge-cum-Special Judge (Vig.), Keonjhar in Criminal Appeal No. 42/29 of 2011-2008 holding that the Opposite Party No.1 is not the legally married wife of the Petitioner, the Opposite Party No.1 filed the aforesaid petition under Section 125 Cr.P.C. No notice in the said proceeding was ever served on the Petitioner. Thus, the Petitioner was kept in dark about the impugned order passed therein. Only after receiving notice in the execution

proceeding, i.e. C.M.C. No. 11 of 2018, the Petitioner came to know about the impugned order. Hence, this RPFAM has been filed.

4. In course of hearing, Mr. Mishra, learned counsel for the Petitioner submits that interest of justice will be best served, if the Petitioner moves the learned Judge, Family Court, Keonjhar under proviso to Section 126(2) Cr.P.C. to get the *ex parte* impugned order set aside.

5. In view of the submission made by learned counsel for the Petitioner, this Court without delving into the question of condonation of delay as well as the merit of RPFAM disposes of the same with an observation that the Petitioner, if so advised, may move the learned Judge, Family Court, Keonjhar by filing a properly constituted petition under proviso to Section 126 (2) Cr.P.C. with a prayer to set aside the *ex parte* order impugned herein.

6. Certified copy of Annexure-3 shall be returned to the learned counsel for the Petitioner on substitution of attested photocopy thereof.

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

(K.R. Mohapatra)
Judge

bks