

IN THE HIGH COURT OF ORISSA AT CUTTACK
RPFAM NO. 59 of 2021

Raghunath Padhy

....

Petitioner

Mr. Jagajit Panda, Advocate

-versus-

Swayam Prabha Dash

....

Opp. Party

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
23.03.2022

Order No.

1. 1. This matter is taken up through hybrid mode.
2. 2. Petitioner in this RPFAM prays for a direction to set aside the judgment and order dated 4th August, 2021 passed in Cr.P No.25 of 2021, whereby learned Judge, Family Court, Berhampur directed the Petitioner to pay monthly maintenance of Rs.15,000/- to the Opposite Party from the date of filing of the application, i.e., from 18th January, 2021 and also to pay a sum of Rs.10,000/- towards litigation expenses.
3. 3. Mr. Panda, learned counsel submits that the Petitioner was not served with the notice of the petition filed under Section 125 Cr.P.C. An application under Section 9 of the Hindu Marriage Act, 1955 (for short, 'the Act') is pending before the self-same court filed by the Petitioner against the Opposite Party. Though Petitioner is diligently pursuing the petition under Section 9 of the Act, instead of serving notice on him personally, the impugned order has been passed without affording him the opportunity of hearing in the petition under Section 125 Cr.P.C.
- 3.1 It is his submission that although the Petitioner is presently residing at Maharana Street, PO: Sriram Nagar, Aska Raod,

Berhampur no notice whatsoever is served in the said address. Hence, the Petitioner could not know about pendency of the criminal proceeding filed by the Opposite Party-wife under Section 125 Cr.P.C. Hence, he prays for setting aside of the impugned order and remit the matter back to learned Judge, Family Court, Berhampur for fresh adjudication of the criminal proceeding giving opportunity of hearing to the Petitioner.

4. Upon hearing learned counsel for the Petitioner and on perusal of case record, it transpires that the sole allegation of the Petitioner is that he was not served with any notice in the criminal proceeding under Section 125 Cr.P.C. filed by the Opposite Party. Such an allegation requires factual adjudication. Section 126 of Cr.P.C. enables the Petitioner to make the prayer made in this RPFAM before the learned Judge, Family Court, Berhampur, who can effectively adjudicate the same. Submission of Mr. Panda, learned counsel for the Petitioner that since three months have already elapsed from 4th March, 2021, when he was set ex parte, no fruitful purpose might be served by moving such application before the learned Judge, Family Court, Berhampur. Such a contention has no legal basis. Since the Petitioner has not availed the remedy provided under law, the RPFAM is not maintainable.

5. Accordingly, the RPFAM stands dismissed. However, dismissal of the RPFAM does not preclude the Petitioner to work out his statutory remedy for redressal of his grievances.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

s.s.satapathy