

IN THE HIGH COURT OF ORISSA AT CUTTACK

RPFAM No. 107 of 2021

Suresh Chandra Bhola

.....

Petitioner

Mr. Satya Narayan Mishra, Advocate

-versus-

Ambika Bhola and others

....

Opp. Parties

Mr. Bijaya Kumar Parida , Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

21.06.2022

Order No.

4.
 1. This matter is taken up through Hybrid mode.
 2. Petitioner in this RPFAM seeks to assail the order dated 1st December, 2021 (Annexure-10) passed by learned Judge, Family Court, Nayagarh in Crl. M.P. No.82 of 2021, whereby the petition filed by the Petitioner under Section 126(1) Cr.P.C. with regard to jurisdiction of the Court to entertain the application under Section 125 Cr.P.C. was rejected.
 3. Mr. Mishra, learned counsel for the Petitioner submits that both husband and wife are staying at Bhubaneswar. In fact, the Opposite Party-wife is staying Bhakti Vihar Plot No.11, New Info-city Greens Apartment, Sailashree Vihar, which is the residence of the Petitioner. The Opposite Party No.1 along with their children is residing in the address mentioned herein above. The children of the Petitioner are pursuing their studies in KIIT International School. But in order to harass the Petitioner, the Opposite Parties filed petition under Section 125

Cr.P.C. (Crl.M.P. No.82 of 2021) in the Court of learned Judge, Family Court, Nayagarh. The cause title of the said petition (Annexure-1) clearly discloses that both the Petitioner and Opposite Parties (Petitioners therein) are residing at Bhubaneswar. The notice of the said proceeding was received by the Petitioner at Bhubaneswar. When the Petitioner (Opposite Party therein) received the notice in the said proceeding under Section 125 Cr.P.C., he appeared before the learned Judge, Family Court, Nayagarh and filed a petition under Section 126(1) Cr.P.C. stating that since both the parties are residing at Bhubaneswar the petition under Section 125 Cr.P.C. is not maintainable at Nayagarh.

4. Learned counsel for the Opposite Party No.1, on the other hand, submits that although the Opposite Party has been shown to be staying at Bhubaneswar along with her children, but the Petitioner is staying at his native place at Nayagarh. Hence, the petition under Section 125 Cr.P.C. was filed before the learned Judge, Family Court, Nayagarh. As such, the learned Family Court has committed no error in passing the impugned order. Hence, he prays for dismissal of the RPFAM.

5. Upon hearing learned counsel for the parties and on perusal of record, it appears that the Opposite Party No.1 in her petition under Section 125 Cr.P.C. (Crl.M.P. No.82 of 2021) has shown the address of the Petitioner (herein) at Bhubaneswar showing that he is residing at Nayagarh, which is under the jurisdiction of the learned Family Court at Nayagarh. Learned counsel for the Petitioner, however, submits that the Petitioner is staying at Bhubaneswar in the same address where the

Opposite Party No.1 along with their children is residing. Since the Petitioner himself admits that he is staying at Bhubaneswar and the notice to show cause in the CrI.M.P. No.82 of 2021 has been received at Bhubaneswar there cannot be no iota of doubt that the Petitioner is residing at Bhubaneswar. It further appears that the proceeding for dissolution of marriage between the petitioner and Opposite Party No.1 is also pending before learned Family Court, Bhubaneswar in CP No.405 of 2020. These material aspects were not considered by the learned Judge, Family Court, Nayagarh while considering the application under Section 126(1) Cr.P.C.

6. In that view of the matter, the impugned order under Annexure-10 is not sustainable and the same is set aside. Learned Judge, Family Court, Nayagarh shall consider the petition filed under Section 126(1) Cr.P.C. afresh giving opportunity of hearing to the parties concerned.

7. In order to avoid delay in disposal of the petition under Section 126(1) Cr.P.C., parties are directed to appear before learned Judge, Family Court, Nayagarh on 11th July, 2022 along with certified copy of this order to receive further instruction in the matter.

8. With the aforesaid observation and direction, the writ petition is disposed of.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge