

CRR(F)-979-2023

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-979-2023
Date of decision: 27.05.2024

SANDEEP

. . . PETITIONER

V/s

PUJA SHARMA AND ANOTHER

. . . RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Gulshan Nandwani, Advocate for the petitioner.

None for the respondents.

SUMEET GOEL, J.

1. Present criminal revision petition has been filed against the order dated 31.05.2023 passed by learned Principal Judge, Family Court, Rewari. Facts relevant for the adjudication of the criminal revision petition are that respondent No.1 being wife and respondent No.2 being minor daughter of the petitioner, filed a petition under Section 125 Cr.P.C. against the petitioner seeking grant of maintenance. The said petition is pending adjudication in the Court of learned Principal Judge, Family Court, Rewari bearing Case No.: MNT-13-2022.

2. Vide order dated 12.05.2022 the learned Family Court, taking note of the fact that Registered Cover notice issued to the petitioner were received back with the report of refusal, proceeded against the petitioner ex-parte in the matter.

CRR(F)-979-2023

2

3. The petitioner vide application dated 07.12.2022 filed before the Family Court, sought setting-aside of the order dated 12.05.2022, whereby he was proceeded against ex-parte in the matter. In the said application it was inter-alia averred that the petitioner had filed a case bearing No.HMA/1180/2021 in the Court of Principal Judge, Family Court, Gurugram. When he went to the Family Court Gurugram on 25.11.2022 to attend his said case, he came to know that the same has been transferred to Rewari by this Court on a Transfer Application filed by the respondent No.1. Then he searched and came to know that the respondent had filed a transfer case bearing TA-1124-2022 before this Court. Then the petitioner on 05.12.2022 obtained the copy of transfer order passed by this Court in TA-1124-2022, online from website of this Court. The perusal of the said order further revealed to him that the respondents have filed a case against him under Section 125 Cr.P.C. at Rewari, which was fixed for 07.12.2022. As such he filed the application seeking setting aside of ex-parte order on 07.12.2022 itself.

4. In the reply filed on behalf of the respondents to the said application dated 07.12.2022 filed by the petitioner, it was simply denied that the petitioner had no knowledge of the proceedings before the Family Court. It is averred that the petitioner was duly served with the notice in the proceedings.

5. The learned Principal Judge, Family Court, Rewari vide order dated 31.05.2023 dismissed the application dated 07.12.2022 filed by the petitioner. Hence, the present criminal revision petition.

6. Perusal of the impugned order dated 31.05.2023 passed by the Family Court reveals, that the application filed by the petitioner seeking setting aside, by which he was proceeded against ex-parte, has been dismissed on two counts; Firstly, that notice issued to petitioner herein was received back with report of refusal. Secondly, that he was

CRR(F)-979-2023

3

proceeded against ex-parte on 12.05.2022 and application for setting aside was filed on 07.12.2022, and as such there was delay of more than seven months in filing the said application.

7. After hearing the arguments and perusing the case record carefully I am of the considered opinion that the impugned order dated 31.05.2023 passed by Principal Judge, Family Court, Rewari is not sustainable in the facts of the case.

8. Perusal of order dated 12.05.2022 makes it amply clear that the Family Court, proceeded ex-parte against the petitioner in the case after simply noting that Registered Cover notice issued to respondent received back with the report of refusal. The details of such refusal are missing in said order. Moreover, there is total non-compliance of the provisions of Sections 62 and 68 of the Code of Criminal Procedure by the Family Court, in effecting service of the summons upon the petitioner. The provisions of Sections 62 and 68 of the Criminal Procedure Code cannot be simply ignored. The order passed by Family Court does not even mention whether the procedure for service of summons as enshrined under Section 62 and 68 of the Criminal Procedure was ever adhered to by it, and if so, the service report in terms of provisions of said sections ought to have been spelled out by the Family Court in its order vide which it proceeded ex-parte against the petitioner herein. Moreover, no satisfaction as required under proviso to Section 126(2) of the Code of Criminal Procedure has been recorded by the Family Court in order dated 31.05.2022 that the petitioner is wilfully avoiding the service or wilfully neglecting to attend the Court. In case of **Kasinath Mohapatra Versus Arnapurna Panda, 1990 CivCC 243**, Hon'ble Orissa High Court has held as under:

“The next contention of Mr. Dhal is no longer res integra in view of the decision of this Court. In Bharat @ Kathia Mallik v. Niasi Mallik,

CRR(F)-979-2023

4

60 (1985) C.L.T. 443, Smt. Sulochana Sahu v. Daman Ch. Sahu, 1986(1) O.L.R. 558, and Biswanath Kabi v. Susama Devi, 65 (1988) C.L.T. 146, after review of a large number of decisions, this Court interpreted the proviso to Section 126(2) and held that if the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte. Before proceeding to hear and determine the case ex parte, a specific order has to be recorded by the Magistrate to the effect that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service or wilfully neglecting to attend the Court.”

9. The second aspect of the impugned order dated 31.05.2023, wherein it was held that the application dated 07.12.2022 filed by the petitioner was time-barred is also not sustainable in the facts of the present case. It is the case of the petitioner that he came to know about the pendency of the proceedings against him under Section 125 of Cr.P.C., after going through the order passed by this Court in Transfer Application filed by the respondent against petitioner. The said averment in view of the fact that the transfer order was passed without issuing notice to the petitioner, seems to be, prima facie, the probable source of his knowledge about the order dated 12.05.2022 proceeding ex-parte against the petitioner. There is no material contrary to it placed on record by the respondents. The respondents failed to controvert this plea of the petitioner by any credible material. As such the petitioner gained knowledge about order dated 12.05.2022 on 05.12.2022 and promptly, applied for setting aside the said order dated 12.05.2022 on 07.12.2022. The period of limitation to challenge order dated 12.05.2022 from the date of gaining its knowledge by the petitioner being 05.12.2022 the

CRR(F)-979-2023

5

application dated 07.12.2022 cannot be termed to be barred by time. The issue of starting point of limitation for seeking setting aside of an ex-parte order in maintenance proceedings has already been adjudicated by a Full Bench of this Court. It was held that the starting point of limitation for setting aside ex-parte order of maintenance starts from the date of acquiring knowledge by a party about the said order and not from the date of order itself. The said judgment was passed by a Full Bench of this Court in case of **Joginder Singh versus Balkaran Kaur, 1971 PLR 679**, while dealing with provisions of Section 488(6) of the Criminal Procedure Code, 1898 which is reproduced below:

“488. Order for maintenance of wives and children.

xxxxxxx

xxxxxxx

(6) All evidence under this chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the cause of summons-cases:

Provided that if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case ex parte. Any order so made may be set aside for good cause shown, on application made within three months from the date thereof.”

10. Perusal of Section 488 (6) of the Cr.P.C. 1898 makes it clear that it is parimateria with section 126(2) of the present Cr.P.C. i.e. Code of Criminal Procedure 1973, which is reproduced below:

“126. Procedure. Xxxxx

xxxxx

(2) All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons cases :

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case ex parte and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.”

11. As such the ratio of law laid down by the Full Bench of this Court is fully applicable to the present case. For ready reference, relevant part of the judgment passed in the case of **Joginder Singh** (Supra) is reproduced herein below:

“In view of the opinion expressed by me above that the expression “the date thereof” occurring in the proviso to Sub-Section (6) of Section 488 of the Code means the date on which the husband or the father, as the case may be, acquires knowledge, actual or constructive, of the *proceedings against him*, I would accept the *petition and remand the case to the Magistrate for deciding the application made by the husband for having the ex parte order set aside.*”

12. In view of my above findings the present criminal revision petition is allowed. The order dated 12.05.2022 passed by the Family Court, Rewari, proceeding ex-parte against the petitioner, as well as the

CRR(F)-979-2023

order dated 31.05.2023 passed by the Family Court, Rewari, whereby application filed by the petitioner for setting aside order dated 12.05.2022, was dismissed, are hereby set-aside. The petitioner is held entitled to participate in the maintenance case pending against him before the Family Court, Rewari with all the rights available to him under the law.

(SUMEET GOEL)
JUDGE

May 27, 2024
jatin

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No