

HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE

BEFORE HON.MR. JUSTICE ALOK VERMA, JUDGE

M.Cr.C. No.3602/2015

Madhusudan S/o Narayan Choubey

Vs.

Smt. Madhuri & another

O R D E R

Post for 04.01.2016

**(ALOK VERMA)
JUDGE**

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Shri Milind Phadke, learned counsel for the applicant.

Ms. Swati Sharma, learned counsel for the respondents.

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(Passed on this 4th day of January, 2016)

This application, filed under Section 482 Cr.P.C., is directed against the order passed by learned Principal Judge (Family Court), Mandleshwar in criminal case No.5/2015 titled '**Madhusudan Vs. Madhuri**'.

This is second round of litigation. Respondent No.1 filed an application against the present applicant under Section 125 Cr.P.C. before the learned Judicial Magistrate First Class, Mandleshwar seeking grant of maintenance allowance to herself and her minor son-respondent No.2. The application was registered as MJC No.17/2013 and an ex-parte order was passed by learned Magistrate. An amount of Rs.5,000/- for respondent No.1 and Rs.2,000/- for respondent No.2 was awarded by the learned Judicial Magistrate.

A revision was filed before the Sessions Court by the respondents. On getting knowledge of the order against him, the present applicant also filed a criminal revision against the respondents. Both the revisions were heard together by the Sessions Court and while dismissing the criminal revision filed by the present applicant, the learned First Additional Sessions Judge, Mandleshwar in criminal revision No.246/2013 enhanced the amount of maintenance awarded for respondent No.1 from Rs.5,000/- to Rs.15,000/- and in respect of respondent No.2 the amount was enhanced from Rs.2,000/- to Rs.10,000/-. Against this order passed in criminal revision, an application under Section 482 Cr.P.C. was filed before this court, which was heard and disposed of in **M.Cr.C. No.5220/2014** by order dated **03.11.2014**.

The Co-ordinate Bench of this court observed that order passed by Judicial Magistrate First Class, Mandleshwar in **MJC No.17/2013** dated **22.10.2013** was an ex-parte order. However, the order passed by learned Additional Sessions Judge in criminal revision was passed after hearing both the parties and considering the salary of the present applicant, which was Rs.60,000/- per month, as he was working as Professor in a college, Co-ordinate Bench of this court observed that the amount of maintenance awarded in favour of respondent No.2, who is suffering from partial disability could not be considered to be on reasonable or too high, but, it was observed by the Co-ordinate Bench that amount of Rs.15,000/- to

respondent No.1 seemed to be on a higher side, and therefore, the application was disposed of by modifying the order passed by learned Revisional Court in following terms :-

1. **Petitioner shall pay maintenance of Rs.10,000/- p.m. to the respondent No.2-son, who is suffering from disability also from the date of order of trial court.**
2. **Petitioner shall pay Rs.5,000/- p.m. to respondent-wife from the date of order of the trial court.**
3. **Trial court shall entertain the prayer of petitioner under Section 126(2) Cr.P.C., if made by him. Till ascertainment of final maintenance amount after hearing both the parties aforesaid amount shall be treated and paid as interim maintenance.**

When the matter reached back to the trial court, the impugned order was passed. The respondents raised an objection before the learned Magistrate that Section 126(2) Cr.P.C. provides that an application for setting aside an ex-parte order should be filed within three months from passing of the ex-parte order, and therefore, the application was filed with delay and the question whether the application is time barred or not should be decided first. However, the learned counsel for the applicant submits that this fact should be decided while deciding the application under Section 126 (2) on merit, and, it should not be decided by way of preliminary objections. The learned Principal Judge (Family Court) observed in the impugned order while deciding this petition whether the application is time

barred or not must be decided first, and therefore, he fix the case for deciding this petition on 13.05.2015 and proceedings before the lower court were stayed by this court.

Now, this application is filed on the ground that learned trial court did not appreciate the fact that an application under Section 126(2) Cr.P.C. was filed in pursuance of direction issued by this Court, and therefore, there was no question of the application being time-barred, and as such, no consideration of this point was necessary. As per the counsel for the applicant, the trial court should comply the directions issued by this court, and should not entertain the application filed under Section 151 C.P.C. which provision is not applicable, as the application under Section 126 (2) Cr.P.C. is governed by provisions of Cr.P.C. and not by C.P.C.

Learned counsel for the respondent opposed the application on the ground that respondent filed an application under Section 151 C.P.C. which is applicable in case where application under Section 126 (2) Cr.P.C. is filed because such proceedings are quasi-criminal and quasi-civil, the lower court has not yet decided the application under Section 151 C.P.C. and a fix date was given for consideration whether application under Section 126 (2) Cr.P.C. is time-barred or not before getting any finding of the lower court, this application is filed. She further submits that this Court directed to decide the application under Section 126 (2) Cr.P.C. as per the provisions of law, and

therefore, period of limitation prescribed by law had to be taken into consideration.

I have gone through the order passed by Co-ordinate Bench of this court meticulously. It is apparent that intention of the Co-ordinate Bench is that the present applicant should be given a chance to be heard by trial court before passing the final order on maintenance amount for respondents No.1 and 2. With this purpose, direction at Sr. No.3 of Para-13 of impugned order, was issued by the Co-ordinate Bench. There appears to be no reason to raise the objection of limitation in this case. In this view of the matter, this application is disposed of with direction that if entire amount of arrears of maintenance allowance to respondents No.1 and 2, as ordered by the revisional court in criminal revision No.246/2013, and modified by this court in **M.Cr.C. No.5220/2014** order dated **03.11.2014** is deposited by the present applicant before the trial court. The delay in filing the application under Section 126 (2) Cr.P.C. is deemed to have been condoned by this Court and the trial court shall proceed to hear and dispose of the application under Section 126 (2) Cr.P.C. on merit, as per the provisions of law.

Certified copy, as per rules.

(Alok Verma)
Judge