
(2009) 02 CHH CK 0007
In the Chhattisgarh High Court

Dharmendra Kumar Tripathi

APPELLANT

Vs

Jeevan Lata and Another

RESPONDENT

Date of Decision : 20-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Family Courts Act, 1984 — Section 10, 19

Citation : (2009) 2 CGLJ 109 : (2009) 2 MPHT 62

Hon'ble Judges : Sunil Kumar Sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—Heard on admission.

2. The applicant has filed this revision u/s 19(4) of the Family Courts Act, 1984 against the order dated 31-10-2008 passed by the First Additional Principal Judge, Family Court, Raipur in Misc. Criminal Case No. 27/2008, whereby, the said Court has restored the application filed u/s 125, Cr.PC, which was dismissed for want of prosecution on 29-8-2008.

3. Shri Jha submits that the Family Court ought not to have exercised such jurisdiction because the proceedings filed u/s 125, Cr.PC are governed by the Code of Criminal Procedure and there is no provision for restoration of case filed u/s 125, Cr.PC by the concerned Court.

4. Chapter IV of the Family Courts Act, 1984 deals with procedure. Section 10 deals with procedure generally. Sub-section (1) of Section 10 provides that subject to the other provisions of this Act and the Rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a Civil Court and shall have all the powers of such

Court. Sub-section (2) provides that subject to the other provisions of this Act and the Rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the Rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

5. There are many decisions to support the contention that the proceedings u/s 125, Cr.PC are of quasi civil nature. In the matter of Goverdhan v. Smt. Panchkunwar 1964 MPLJ 68, the Madhya Pradesh High Court held that the proceedings under Chapter XXXVI of the Code of Criminal Procedure (as it then was) were of civil nature. In the said case, an ex parte order of maintenance was passed against the husband and the husband became insane during the pendency of the proceedings. The Court held that the next friend of the husband could file an application on behalf of the insane husband to set aside the ex parte order. This was held in the logic that since the proceedings under the said Chapter of the Code of Criminal Procedure are of civil nature, such application can be entertained.

6. Therefore, there would hardly be any jurisdictional error committed by the Presiding Judge of the Family Court while restoring a petition on sufficient grounds, which was dismissed for want of prosecution when on a particular day, the petitioner did not appear in the matter.

7. In view of the above, I do not find any force in the arguments advanced by learned Counsel for the appellant.

8. This revision deserves to be and is accordingly dismissed at the motion stage itself.