

(2011) 11 UK CK 0186

In the Uttarakhand High Court

Case No : Criminal Revision No. 262 of 2011 with Stay Application No. 1263 of 2011

Rampal

APPELLANT

Vs

Smt Anita and Arjun Minor represented through Smt Anita

RESPONDENT

Date of Decision : 30-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2011) 11 UK CK 0186

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon''ble Prafulla C. Pant, J.—Heard.

2. This revision is directed against the order dated 07.10.2011, passed by Judge Family Court, in Criminal Misc. Case No. 116 of 2008, whereby said court has rejected the application of the husband (revisionist) seeking setting aside of the ex-parte order dated 05.09.2008, passed u/s 125 of Cr.P.C.,

3. Brief facts of the case are that, the revisionist is a sweeper. An application u/s 125 of Cr.P.C, appears to have been moved in the year 2008, by the respondent No. 1 Anita claiming herself to be wife (of the revisionist) and respondent No. 2 Arjun, a minor son, for maintenance. The trial court (Judge Family Court, Hardwar) disposed of the application u/s 125 of Cr.P.C., vide its order dated 05.09.2008, directing the revisionist to pay maintenance at the rate of Rs. 2,000/-per month to his wife and the minor son. On 11.07.2011, the revisionist moved an application before the trial court praying that the ex-parte order be set aside. However, vide impugned order dated 07.10.2011, the trial court rejected said application of the revisionist observing " not pressed", after rejecting the application for adjournment.

4. Learned counsel for the revisionist argued before this court that grave

injustice has been done to the revisionist, who is a sweeper, by rejecting his application seeking to set aside the ex-parte order after rejection the application for adjournment, which was not even opposed by the counsel for the other side.

5. On the other hand learned counsel for the respondents submitted that from the order dated 19.01.2011, it is clear that when the application was moved for recovery of the amount of maintenance directed to be paid, the revisionist deposited amount on 10.03.2010, as such, he had knowledge of the ex-parte order at least in March 2010, as such the application moved in July 2011 was barred by time.

6. In reply to above contention of learned counsel for the respondents it is argued before this court that the trial court has not discussed at all in the impugned order whether the application was barred by time or not, nor the question was considered as to whether it was a fit case for condonation of delay in filing the application or not. It is further pointed out on behalf of the revisionist that the poor revisionist is languishing in jail, even today, as he could not make the payment of the maintenance at the rate of directed by the trial court in the ex-parte order passed in September 2010.

7. In the above circumstances, having considered submissions of learned counsel for the parties, and after going through the impugned order and other papers on record, this court is of the view that this revision deserves to be allowed. Accordingly, the revision is allowed. Impugned order dated 07.10.2011 is set aside. The trial court is directed to decide the application of the revisionist relating to setting aside of the ex-parte order, on merits afresh expeditiously. Parties or the local counsel for the parties shall appear before the trial court on 14th of December 2011.