



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE DWARKA DHISH BANSAL
ON THE 7th OF MAY, 2026**

CRIMINAL REVISION No. 6351 of 2024

SMT. RASHI MOOLCHANDANI AND OTHERS

Versus

KOMAL MOOLCHANDANI

Appearance:

None for the petitioners.

ORDER

Registry has listed this case for consideration of pending application (IA No.510/2025) for condonation of delay of 189 days occurred in filing of instant criminal revision as well as for admission.

2. The application has been filed on the ground that the petitioners were not aware about the impugned order dtd.12.03.2024 nor did their local counsel inform them about dismissal of the maintenance case and when they came to know about the same, they contacted the counsel and after getting the certified copy of impugned order, the criminal revision was filed immediately.

3. Upon due consideration of the reasons assigned in the application especially in the light of illegally passed final order dtd.12.03.2024 dismissing the main application for want of prosecution, the delay occurred in filing of the instant criminal revision is hereby condoned even without issuing notice



to the respondent/husband in the light of decisions of Hon'ble Supreme Court in the case of SeshNath Singh And Another v. Baidyabati Sheoraphuli Co-operative Bank Ltd. And Anr., **(2021) 7 SCC 313** (pr.61-62) and N. Balakrishnan v. M. Krishnamurthy, **AIR 1998 SC 3222**.

4. It is pertinent to mention here that during pendency of main application under Section 125 of Cr.P.C. an application for interim maintenance was filed and after hearing the parties the same was allowed vide interim order dtd.21.09.2021 awarding an amount of Rs.10,000/- each to the petitioners 2-3 (minor daughters), which was challenged by the respondent/husband by filing connected CRR no.3003/2021, which was tagged with the instant criminal revision and due to passing of final order dtd.12.03.2024, has been dismissed by this Court today itself as having rendered infructuous, which shows that the respondent/husband is well aware of the pendency of instant criminal revision.

5. Although the petitioners, instead of filing instant criminal revision, may also file an application for restoration of main application under Section 125 Cr.P.C. but there being no clear position about filing of the application for restoration, it may take years together for its decision. Since the impugned order is a glaring example of non-application of mind and not following the law declared by the Hon'ble Supreme Court, for want of knowledge or



otherwise, therefore, instant criminal revision is being decided even without issuing any notice to the respondent.

6. This criminal revision has been preferred by the petitioners (wife and two minor daughters) challenging the order dated 12.03.2024 passed by Principal Judge, Family Court, Katni in MJCR no.33/2021 whereby the Family Court has dismissed an application under Section 125 of Cr.P.C. filed by the petitioners for want of prosecution, even after recording entire evidence of the petitioners i.e. after closure of evidence of the petitioners.

7. Even though no one is appearing on behalf of the petitioners to press the instant criminal revision, but from perusal of the record it is clear that in support of the application under Section 125 of Cr.P.C., the petitioners adduced their evidence and lastly it was declared closed on 10.02.2024, thereafter the respondent/husband was directed to produce his evidence on 24.02.2024.

8. On 24.02.2024, the respondent did not appear for recording of his statement and an application was filed on his behalf for adjournment on the ground of illness of the respondent, which was granted by the Family Court for 02.03.2024, with the direction to the respondent to produce his entire evidence on the given date. Again on 02.03.2024, an adjournment was sought on behalf of the respondent on the same ground, which was granted by the Court with direction to respondent to produce his evidence on 11.03.2024.



9. On 11.03.2024, the respondent-Kamal Moolchandani was examined. Order sheet dtd.11.03.2024 makes it clear that during the course of chief examination the respondent filed and exhibited certain documents. However, due to non-availability of main counsel, an application under Order XVII Rule 1 of C.P.C. was filed on behalf of the petitioners, by the junior counsel Shri Manu Tiwari, for grant of one week's time on the ground of illness of the main counsel appearing for the petitioners, but the case was listed for evidence/cross-examination of the respondent for 12.03.2024.

10. Apparently, on 12.03.2024, the case was taken up at 12:10 p.m. but no one had appeared on behalf of the petitioners, consequently, the Court at 03:20 p.m. dismissed the main application under Section 125 of Cr.P.C. for want of prosecution i.e. in absence of the petitioners or their counsel. The order sheet dated 12.03.2024 also shows that on the same date, an application was filed by junior counsel Shri Manu Tiwari, for setting aside the order of dismissal of application under Section 125 of Cr.P.C. at about 04:30 p.m., which was taken up for consideration at 04:55 p.m. and was dismissed on the ground that since the petitioner 1/wife has not appeared in the case and as per Section 13 of the Family Courts Act, 1984 an Advocate, as a matter of right, is not entitled to appear on behalf of a party and since the application under Section 125 of Cr.P.C. has already been dismissed, rejected the prayer for restoration of the main case under Section 125 of Cr.P.C.



11. Apparently entire procedure for adjudication of an application under Section 125 of Cr.P.C. is prescribed under Section 126 of the Cr.P.C./Section 145 of B.N.S.S. and in presence of Section 127 of Cr.P.C./Section 146 of B.N.S.S. and due to bar created under Section 362 of Cr.P.C./Section 403 of B.N.S.S. even the provision of review provided under Order XLVII Rule 1 of C.P.C. is not applicable to such proceedings. These proceedings are quasi-civil and intended for summary relief and not a final determination of civil status. However, in the interest of justice and with a view to follow the principles of natural justice and further with a view to clear the doubts about granting adjournments, recording evidence including cross-examination of the witnesses, the Family Court or any other Court can adopt the procedure prescribed under the C.P.C. while deciding the application/proceeding under Section 125 of Cr.P.C., which is usually adopted by the Family Court and other Courts while deciding the application under Section 125 of Cr.P.C./144 of B.N.S.S. Needless to mention that the principle of *resjudicata* is also not applicable to such proceedings, they being of summary nature.

12. In my considered opinion, in view of the fact that the petitioners had already adduced their evidence and it was declared closed on 10.02.2024, therefore and when the case was fixed for cross-examination of respondent for 12.03.2024 and for that purpose only one adjournment was sought and granted by the Family Court on 11.03.2024 to the petitioners, but due to non-



appearance of the main counsel for the petitioners, first of all the Family Court ought to have granted at least one reasonable opportunity of seven days, as prayed by the counsel appearing for the petitioners.

13. Further, while adjourning the case vide order dated 11.03.2024 the Court appears to have committed an illegality in granting only one day's adjournment for the purpose of cross-examination of the respondent by the petitioners without taking into consideration the ground of illness of advocate and the provisions contained in Order XVII Rule 1(2)(b) of C.P.C. which provides that no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party.

14. In my considered opinion and as has been held by Hon'ble Supreme Court in the case of Bashir Ahmed vs. Mehmood Hussain Shah, **AIR 1995 SC 1857**, when on the date of cross-examination of the respondent, the counsel for the petitioners did not appear, the same itself was sufficient ground to grant reasonable adjournment at least of seven days because in absence of the counsel and even in presence of a party to the lis, he/she cannot be supposed to cross-examine the opposite party and these circumstances were beyond the control of the petitioners.

15. In the present case, it is one of the important facts, that evidence of the petitioners was closed on 10.02.2024, thereafter, two adjournments were granted to the respondent/husband and only first time i.e. on 11.03.2024



adjournment was sought for the purpose of cross-examination of the respondent that too on the ground of illness of main counsel.

16. Even after granting permission to the counsel, as per Section 13 of the Family Courts Act, 1984, if the Court was of the opinion that the counsel for the petitioners was not entitled to make a prayer for adjournment, then fresh notice/summons for appearance in the case ought to have been issued to the petitioners in absence of their counsel, especially when the petitioners were not aware about the date of hearing as well as when the Court permitted the respondent to produce certain documents along with the list of documents and to mark exhibits thereon directly even without filing any application in that regard and even without supplying their photocopies to the petitioners. In any case, after permitting the counsel to represent the petitioners, the Family Court without revoking the permission, had no jurisdiction to refuse the prayer to grant adjournment on the premise that as a matter of right, the counsel is not entitled to appear on behalf of a party.

17. Further, upon adducing evidence by the petitioners, even if no one had appeared on behalf of the petitioners to cross-examine the respondent/husband or his witnesses, the Court was competent to proceed further by following the procedure given under Explanation to Order XVII Rule 2 of the C.P.C. treating the petitioners as present for passing appropriate orders and after recording *ex-parte* evidence of the respondent, ought to have



passed the final order on the main application, as has been held by the Hon'ble Supreme Court in the case of G. Ratna Raj (D) By LRs. v. Sri Muthukumarasamy Permanent Fund Ltd., **(2019) 11 SCC 301**; and B. JanakiramaiahChetty v. A.K. Parthasarathi and Others, **(2003) 5 SCC 641**;as well as by this Court in the case ofRambatiBai and others v. Govind Narayan Sharma, **2024 SCC OnLine MP 5140**.

18. In view of the aforesaid discussion, criminal revision succeeds in part and is allowed and by setting aside the impugned order dated 12.03.2024, the matter is remanded to the Family Court, with the direction to restore the application under Section 125 of Cr.P.C. to its original number and to decide the same afresh on its own merits, after giving due opportunity of hearing to the parties and without being influenced by the impugned order.

19. Parties are directed to remain present before the Family Court on 29.06.2026.

20. It is made clear that if the parties to the proceedings do not appear before the Family Court, it shall issue fresh notice/summons with a view to secure their presence before the Family Court.

21. Pending application(s), if any, shall stand disposed of.

(DWARKA DHISH BANSAL)
JUDGE