

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

MC(Cril.Rev.Pet.) No. 9 of 2019

Ref: (i) Cril. Revision Petition No. 25 of 2019

(ii) Cril. Misc. Application No. 4 of 2015

Lalfakawma Sailo aged about 35 years S/o Rohmingliana Sailo of Kanan Beng, W. Phaileng, Mamit District, Mizoram (Rfn. No. 3900807, 39 Assam Rifles stationed at Lammual, Aizawl District Mizoram C/O 99 APO) and at present: Paona Bazar, P.O & P.S. – Imphal, District – Imphal West, Manipur, Pin No. 795001.

..... Applicant/Petitioner

- Versus -

1. Smt. Mary Niangkhanem, aged about 37 years, D/O Vungkhanpau, a resident of Zoar Veng, Bungmual, P.O. & P.S. – Churachandpur, District, Churachandpur, Manipur, Pin No. 795128.
2. Miss Lalchawimawii Sailo, aged about 13 years, D/O Shri Lalfakawma Sailo, a resident of Zoar Veng, Bungmual, P.O. & P.S. – Churachandpur, District - Churachandpur, Manipur, Pin No. 795128.
3. Miss Glorya Saizampuii Sailo, aged about 9 years, D/O Shri Lalfakawma Sailo, a resident of Zoar Beng, Bungmual, P.O. & P.S. – Churachandpur, District - Churachandpur, Manipur, Pin No. 795128.

(...the above names Respondent nos. 2 & 3 being minors, are represented by the Respondent No. 1 i.e. their natural mother namely Smt. Mary Niangkhanem)

.....O.Ps./Respondents.

with

Cril. Revision Petition No. 25 of 2019

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.....Respondents.

B E F O R E
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Applicant/Petitioner	::	Mr. Ajoy Pebam, Advocate
For the respondents/Defendants	::	Mr. S. Chitaranjan, Advocate
Date of hearing	::	10.08.2023
Date of Judgment and Order	::	27.12.2023

ORDER (CAV)

[1] Heard Mr. Ajoy Pebam, learned counsel for the applicant/petitioner and Mr. S. Chitaranjan, learned counsel along with Mr. A. Priyokumar Sharma, learned counsel for the respondents.

[2] The present application has been filed by the applicant/petitioner under section 5 of the Limitation Act, 1908 read with Section 151 of the CPC, 1908 praying for condoning the delay of 940 days in filing the Cril. Revision Petition.

[3] The applicant/petitioner married respondent No. 1 on 02.12.2004 and they had 2 (two) daughters, who are respondent Nos. 2 & 3 respectively. Due to family dispute, respondent No. 1 approached Ld. Judicial Magistrate First Class, Aizawl, Mizoram by way of Criminal Complaint No. 186 of 2012 praying for payment of maintenance and vide order dated 19.03.2013, the Ld. Judicial Magistrate First Class, Aizawl allowed the Criminal Complaint by directing the petitioner to pay Rs. 1,500/- (Rupees one thousand five hundred) each to his minor daughters i.e. respondent Nos. 2 & 3 and to respondent No. 1 (altogether Rs. 4,000/-

as maintenance allowance). Thereafter, the applicant/petitioner filed an application being Application No. 81 of 2015 before the Ld. Senior Civil Judge, Mamit District, Mizoram praying for issuing a Divorce Certificate and vide order dated 25.03.2015 the Ld. Senior Civil Judge, Mamit District, Mizoram allowed the Application No. 81 of 2015.

[4] Thereafter, the O.Ps./respondents filed a Cril. Misc. Application No. 4 of 2015 before the Ld. Family Court, Churachandpur, Manipur for enhancement of the monthly maintenance allowance which was passed in Criminal Complaint No. 186 of 2012 and on 28.10.2016, the Ld. Family Court, Churachandpur passed an impugned order directing the petitioner to pay the enhance maintenance allowance.

[5] After receiving the impugned order dated 28.10.2016, the applicant/petitioner searched for an Advocate from Manipur and had taken some time and finally he found an advocate. Thereafter, the counsel advised to obtain the necessary documents from the Ld. Judicial Magistrate First Class, Aizawl, Mizoram and he had taken 2 (two) months for obtaining necessary documents. The petitioner's counsel took some time to prepare the case and waited for 45 days for call and she had taken some time for obtaining all case records of the Churachandpur Court.

[6] Due to long communication gap between the applicant/petitioner and his counsel and no progress was made in his case, he decided to engage new counsel. Finally, he found a new counsel and the new counsel advised him to obtained fresh certified copy of all

necessary documents from Mizoram. As such, there is delay of 940 days on the part of the applicant/petitioner in filing Cril. Revision Petition. It is prayed that delay of 940 days be condoned.

[7] The respondents filed affidavit-in-opposition wherein it is stated that the revision petition along with the condonation application were filed after 3 (three) months and no cause is shown as to why the revision petitioner along with condonation application were filed after 3 (three) months. It is stated that delay of 940 days in preferring a revision petition is inordinate in nature and no sufficient cause is shown except mere allegation against one Grace, advocate, for not preferring the revision petition within the period prescribed by law. Under Article 131 of the Limitation Act, 1963, the period of limitation for preferring a revision petition is 90 days from the date of order sought to be revised. Due to the petitioner's negligence, inaction and want of bonafide, he could not prefer the revision petition well within time prescribed by law. It is stated that sufficient cause as used in Section 5 of the Limitation Act means a cause beyond the control of the party invoking the said of the Section. The cause of delay as set forth by the petitioner in his condonation application could have been avoided if he exercised due care and attention thereof. It is stated that there is no material to show that the petitioner had appointed any counsel in connection with his case before the Ld. Family Court, Churachandpur and there is no material to show that the petitioner taken action against the said advocate for misconduct or otherwise. The petitioner fails to show a due sufficient cause for the whole of the delay

covered by the period between the last day prescribed for filing the revision and the day on which the revision is filed. It is prayed that the present application be rejected.

[8] The applicant/petitioner filed rejoinder affidavit to the affidavit-in-opposition filed by the respondents where it is stated that the Ld. Family Court, Churachandpur, Manipur without having any jurisdiction to take up the matter passed the impugned order dated 28.10.2016 whereby directing the applicant/petitioner to pay the enhanced maintenance allowance per month to the respondents. When the impugned order was passed, the applicant/petitioner engaged a lawyer but a fruitful action could not be taken up and hence, there is no negligence from the part of the petitioner. It is also stated that the applicant/petitioner has acted diligently and sufficient case has been explained showing reasons which prevented him from preferring the Cril. Revision Petitioner during the period of limitation prescribed in the condonation application so as to advance for substantial justice. It is prayed that the present application may be allowed and the delay of 940 days caused in filing the present Cril. Revision Petitioner be condoned.

[9] Mr. Ajoy Pebam, learned counsel for the applicant submits that the delay in filing the accompanying petition has been explained and the same has been caused due to facts narrated as above. He further explains that since the impugned order is passed by a court without any jurisdiction, the same can be challenged at any time. It is also stated that

when serious question of jurisdiction is raised, court ought to have taken a liberal view. Learned counsel for the applicant refers to the decision in the case of **Prahlad Raut v. All India Institute of Medical Science: 2019 Legal Eagle (SC) 936 @ Para 22** to the point that illegal and void ab initio order can be challenged at any time. Reliance is also placed on the decision of **Divisional Manager, Plantation Division, Andaman & Nicobar Islands v. Munnu Barrick: (2005) 2 SCC 237 @ Para 23** to emphasise that where serious questions of law were raised, the court should have taken a liberal view on the application of the condonation. Learned counsel for the applicant further cites the case of **Rajnish v. Neha: (2021) 2 SCC 324 @ Para 128.3** holding that modification of order passed in previous proceeding can be done in the same proceeding. It is prayed that the delay so caused be condoned and the main petition be heard on merit.

[10] Mr. S. Chitaranjan, learned counsel for the respondents submits that no proper explanation has been given by the applicant for condoning 940 days of inordinate delay in filing the accompanying revision petition. It is stated that except for blaming on some counsel, sufficient cause has not been given for not preferring the revision on time. It is pointed out that the delay so caused is due to the gross negligence on the part of the applicant. It is clarified that the Family Court at Churachandpur, Manipur has jurisdiction to entertain the application filed by the respondents and case laws cited by the applicants are not applicable in the

facts of the present case. It is prayed that the application for condonation be rejected with cost.

[11] This Court has considered the material on record, the submissions made at bar and relevant case laws. In the present case, the delay of 940 days is somewhat long and the applicant tries to explain the same to some extent. However, the fact of litigations in States has to be taken into account. Moreover, the important question of law, ie, competency of a court in Manipur to enhance/modify the maintenance awarded by a court in Mizoram, is involved in the present case. In the circumstances, this Court is inclined to hear the main petition on merit, as the question of jurisdiction and competency of the court has arisen. Accordingly, the delay of 940 days in filing the accompanying petition against the impugned order dated 28.10.2016 passed by learned Family Court at Churachandpur, Manipur in Cril. Misc. Application No. 4 of 2015 is condoned, subject to payment of Rs.2000/- in favour of the respondents. The application is allowed and disposed of.

[12] List Cril. Rev. P. No. 25 of 2019 on 31.01.2024 for further proceeding.

JUDGE

FR/NFR

joshua

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PRIYOJIT
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