



IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH

AT BILASPUR

Single Bench

Criminal Revision No.639.../2013

APPLICANT : Rekhlal Sahu S/o Awadh ram
Non-Applicant Sahu, aged about 31 years, R/o
Village Shergarh, Post Office
Shergarh, Head Post Office &
Tahsil Khairagarh, Civil Revenue &
District Rajnandgaon (C.G.)

6-39/13
Presented by Shri. Surinder Kumar
30/9/13

VERSUS

NON-APPLICANT : Smt, Kanti Sahu W/o Rekhlal
Sahu (wrongly shown married
wife of Rekhlal Sahu) aged about
29⁸³ years, R/o Village Doma, Post
Bori, Tahisl Dhamdha, Civil
Revenue & District Durg (C.G.)

CRIMINAL REVISION UNDER SECTION 19 (4) FAMILY
COURTS ACT READ WITH SECTION 397/401 OF CRIMINAL
PROCEDURE CODE

Being aggrieved by impugned order dated
06/09/2013 passed in miscellaneous criminal
case No. 21/2012 passed by 3rd Additional
Principle Judge, Family court Durg (C.G.) Presided
over by Shri K. Vinod Kujur; whereby maintenance
of Rs. 1000/- per month payable to non applicant,
from the applicant has been imposed; the
applicant named above most humbly begs to

RL
(R.H.J.)

(2) (S)

prefer this Memo of revision on the following facts
and grounds. Certified copy of the order being
marked and annexed as ANNEXURE/C.R.R-1.



HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO. 639 OF 2013

37

APPLICANT

(Non-applicant)

Rekhlal Sahu

VERSUS

NON-APPLICANT

(applicant)

Smt. Kanti Sahu

**REVISION UNDER SECTION 19 (4) OF THE FAMILY COURTS
ACT, 1984 READ WITH SECTION 397/401 OF THE CODE OF
CRIMINAL PROCEDURE, 1973**

Present:

Mr. R.N. Jha, Advocate, for the Applicant.

Mr. P.R. Patankar, Advocate, for Non-applicant.

(Single Bench : Hon'ble Mr. P. Sam Koshy, J.)

ORAL ORDER

(13-2-2014)

(1) Heard on admission.

(2) By way of the present criminal revision, the applicant has challenged the order dated 6.9.2013 passed in M.Cr.C. No.21/2012 by Third Additional Principal Judge, Family Court, Durg (for short, "Family Court").

(3) Facts of the case in short are that non-applicant (Smt. Kanti Sahu) had filed a case before the Family Court under Section 125 of CrPC claiming maintenance from the applicant (Rekhlal Sahu). Case of the non-applicant before the Family Court was that the applicant had married her and after some time he had left her without any source of maintenance and she was finding it difficult to sustain herself and, therefore, she was compelled to file a case under Section 125 of CrPC claiming a relief of an amount of Rs.5000/- from the applicant towards maintenance.

(4) The applicant herein (who was non-applicant before the Family Court) had entered appearance and submitted his written statement before the Family Court stating that the first wife of the applicant was Santoshi Bai and that subsequently he had been living with Kanti Sahu (who is non-applicant in the present revision petition). However, the applicant has also submitted in his reply that the applicant is as of now staying with another lady namely Revati Bai.

(5) After taking into consideration the entire evidence, the Family Court vide impugned order dated 6.9.2013 has passed an order for payment of maintenance to non-applicant (Kanti Sahu) at the rate of Rs.1000/- per month payable by the applicant (Rekhlal Sahu).

(6) It is this order which has been put to challenge by the applicant (Rekhlal Sahu) in the instant criminal revision stating that non-applicant (Kanti Sahu) is not entitled for maintenance and the order of the Family Court is bad in law.

(7) Learned counsel for the applicant has contended that non-applicant has failed to establish as to how she was the legally wedded wife so as to get the advantage of maintenance under Section 125 of CrPC. The counsel has further contended that the Family Court has not properly appreciated the contentions put forth by the present applicant in as much as the first wife of the present applicant namely Santoshi Bai is alive and living at Rajnandgaon. It was also the contention of the counsel for the applicant that even in the evidence it has not been established by non-applicant as to whether there had been customary divorce by the applicant with his first wife Santoshi Bai. In the absence of these ingredients, the Court below ought to have been considered the contentions of the applicant in its right perspective and should have rejected the application filed by non-applicant on the ground that maintenance would only be entitled to a lady who is the legally wedded wife.

(8) Per contra, learned counsel for non-applicant opposing the prayer of the applicant took the Court through the evidence that have come on record and also the written statement filed by the present applicant before the Family Court wherein the applicant has admitted that he had been staying with the present non-applicant for quite some time. In the evidence of the present applicant before the Family Court, he has also admitted at a couple of place that the applicant was staying with the present non-applicant as husband and wife for quite some time.

3rd

(9) Considering the rival contentions put forth by the counsel appearing for either side and on perusal of the evidence that have come on record, firstly, when we read the written statement filed by the present applicant, in his additional submission that he has made in his written statement he has referred to Santoshi Bai as his first wife. This itself gives an inference that non-applicant was the second wife for the reason that in the written statement itself the present applicant admits the fact that he had been staying with the present non-applicant at Hirri for quite some time.

(10) Further, if we peruse the evidence of the applicant, firstly, in para 5 he has referred at two places that he had been staying with the present non-applicant as husband and wife and, secondly, he also admits that he had been having physical relations with non-applicant and maintained the same as husband and wife.

(11) If we see the statement of AW-2 Amar Singh Sahu, he has also in his statement made a submission that the marriage of the present applicant Rekhilal Sahu with his first wife Santoshi Bai had been dissolved under the prevalent custom of the society, which is generally known as *Chhorchhutti*.

(12) Further, on going through the evidence given by non-applicant Kanti Sahu before the Family Court, it is evidently clear that she was not aware about the present applicant being already a married person and that she was not aware of the present applicant was married to Santoshi Bai earlier and that this fact was not disclosed to her by the present applicant.

(13) Taking into consideration the evidence that have come on record, it is established that the applicant had admitted of accepting Smt. Kanti Sahu to be his wife.

(14) Recently, Hon'ble Supreme Court in the case of **Badshah v. Sou. Urmila Badshah Godse and another**, reported in 2014 AIR SCW 256, has held that if there are strong and cogent evidence that the petitioner and the respondent were living as husband and wife

then the application under Section 125 CrPC for maintenance was sustainable. The Hon'ble Supreme Court in the said judgement has also stated that the purpose of Section 125 CrPC is to achieve social justice which is the Constitutional vision enshrined in the Preamble of the Constitution of India. Hon'ble Supreme Court has further held that it becomes the bounden duty of the Courts to advance the cause of the social justice.

(15) Hon'ble Supreme Court in the said judgement has relied upon the judgement passed in *Chanmuniya v. Virendra Kumar Singh Kushwaha and another* [2011 (1) SCC 141] in which it has been held that the term "wife" occurring in Section 124 CrPC is to be given very wide interpretation with an object of fulfilling the true spirit and essence of the beneficial provision of maintenance under Section 125 CrPC. Referring to the judgement in the case of *Chanmuniya* (supra), in para 12, Hon'ble Supreme Court has in categorical terms held that a broad and expansive interpretation should be given to the term "wife" to include even those cases where a man and woman have been living together as husband and wife for reasonably long period of time and in such cases strict proof of marriage should not be a pre-condition for maintenance under Section 125 CrPC.

(16) Hon'ble Supreme Court in the case of *Badshah* (supra) in para 17 has categorically held as such:

"17. Thirdly, in such cases, purposive interpretation needs to be given to the provisions of Section 125, Cr.P.C. While dealing with the application of destitute wife or hapless children or parents under this provision, the Court is dealing with the marginalized sections of the society. The purpose is to achieve "social justice" which is the Constitutional vision, enshrined in the Preamble of the Constitution of India. Preamble to the Constitution of India clearly signals that we have chosen the democratic path under rule of law to achieve the goal of securing for all its citizens, justice, liberty, equality and fraternity. It specifically highlights achieving their social justice. Therefore, it becomes the bounden duty of the Courts to advance the cause of the social justice. While giving interpretation to a particular provision, the Court is supposed to bridge the gap between the law and society."

(17) Taking into consideration the facts and circumstances of the case particularly in the light of evidence of the applicant as well as that of Smt. Kanti Sahu (AW-1), I am of the opinion that the Family Court has not committed any error of law while passing the impugned order dated 6.9.2013 and the same is proper, legal and justified.

(18) Accordingly, the criminal revision is dismissed being devoid of merits. No order as to costs.

Sd/-
P. Sam Koshy
Judge