

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 364 OF 2015**

Ganpat Ram Sahu S/o Shri Ful Singh Sahu, aged about 33 years, R/o Village Matiya, P.S. & Tahsil Dharsiwa, Civil & Revenue District Raipur (C.G.)

---Applicant**Versus**

Kumari Bai D/o Shri Beniram Sahu, W/o Rupchand Sahu, R/o Village Raikheda, Police Station Kharora, Tahsil Simga, District Raipur (C.G.)

----Non-applicant**AND****Criminal Revision No. 370 OF 2015**

Ganpat Ram Sahu S/o Shri Ful Singh Sahu, aged about 35 years, R/o Village Matiya, P.S. & Tahsil Dharsiwa, Civil & Revenue District Raipur (C.G.)

---Applicant**Versus**

1. Kumari Bai W/o Shri Ganpatram Sahu, aged about 33 years, Occupation House Wife.

2. Nitesh Sahu, aged about 11 years, S/o Ganpatram Sahu,

Both are R/o Village Raikheda, Police Station Kharora, Tahsil

Simga, District Raipur (C.G.)

----Non-applicants

For Applicant : Mr. Krishna Kumar Dewangan, Advocate
For Non-applicants : Mr. Vikram Singh, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

07/10/2015

1. With the consent of learned counsel for the parties, the matter is heard finally.
2. In an application filed under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter called as 'Cr.P.C.') by the non-applicant No.1 herein/wife-Kumari Bai, the Family Court by its order dated 08/06/2005 granted monthly maintenance to the tune of Rs.500/- to the non-applicant No.1/wife and Rs.100/- to non-applicant No.2/son finding that the relationship between husband and wife is established and non-applicants are unable to maintain themselves.
3. Thereafter, non-applicants herein filed an application under Section 127 of the Cr.P.C. for enhancement of maintenance amount, the Family Court by its order dated 22/01/2010 enhanced the maintenance amount and directed that the non-applicant No.1/wife will be entitled for Rs.600/- per month and non-applicant

No.2/son will be entitled for Rs.400/- per month. Feeling dissatisfied with the order of the Family Court, non-applicants again filed an application on 18/07/2011 for further enhancement of maintenance amount, *whereas* applicant/husband has filed an application under Section 125(4) of the Cr.P.C. stating that the non-applicant No.1/wife is not entitled for maintenance.

4. The Family Court, by two separate orders has allowed the application filed by the non-applicants granting maintenance to the extent of Rs.1,200/- per month to non-applicant No.1/wife and Rs.800/- per month to non-applicant No.2/son, *whereas* an application filed by the applicant under Section 125(4) of the Cr.P.C. has been rejected.

5. Against the application enhancing maintenance, Criminal Revision No.370/2015 has been filed, *whereas* rejection of application under Section 125(4) of the Cr.P.C., Criminal Revision No.364/2015 has been filed.

6. Mr. K.K. Dewangan, learned counsel appearing for the applicant/husband would submit that non-applicant No.1/wife earlier married to Rupchandra Sahu on 05/05/1992 and she has not taken divorce from her former husband and married with the applicant, as such, the case is covered under Section 125(4) of the Cr.P.C., therefore, the trial Court has committed serious illegality by rejecting his application. He would further submit that

Family Court has enhanced the maintenance amount from Rs.600/- per month to Rs.1,200/- per month in favour of the non-applicant No.1/wife and from Rs.400/- per month to Rs. 800/- per month in favour of the non-applicant No.2/son is on the higher side and the applicant has no means to pay the said enhanced amount, therefore, it be set-aside.

7. Mr. Vikram Singh, learned counsel appearing for the non-applicants/wife and son would submit that the relationship between husband and wife is duly established and the Family Court by its order dated 08/06/2005, granted maintenance to the non-applicants. Thereafter, on 22/01/2010 an application for enhancement of maintenance amount was allowed and the issue of relationship between husband and wife has attained finality and now, at this stage, no such application is maintainable and Section 125(4) of the Cr.P.C. is also not attracted at all, as such, the Family Court is absolutely right in rejecting the application under Section 125(4) of the Cr.P.C. and rightly granted the application for enhancement of maintenance amount in view of the change in circumstances, therefore, both the revisions deserves to be dismissed.

8. It is not in dispute that by order dated 08/06/2005, in a maintenance proceeding with the consent of the parties, Rs.600/- monthly maintenance was granted to the non-applicants and the

parties have admitted the fact of marriage in *Churi* form. Thereafter, by order dated 22/01/2010, application under Section 127 of the Cr.P.C. was entertained and the amount of monthly maintenance was enhanced as indicated here-in-above and no dispute about validity of marriage was raised. The non-applicants again filed an application under Section 127 of the Cr.P.C on 18/07/2011 for further enhancement of maintenance amount, in which, the question with regard to the validity of marriage has been raised by the applicant/husband, which was negated by the Family Court on the ground of estoppel.

9. A bare perusal of the order dated 08/06/2005 and 22/01/2010, it is quite *vivid* that the fact of relationship between applicant and non-applicant No. 1 as husband and wife is clearly admitted by the applicant and now the applicant cannot be permitted to question the validity of marriage by filing the application under Section 125(4) of the Cr.P.C. Under Section 125(4) of the Cr.P.C. states that no wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding as the case may be] from her husband if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

10. None of the aforesaid three circumstances has been

shown to be exist in the instant case to cancel the order of maintenance granted earlier, as such, the learned Family Court has rightly rejected the application filed by the applicant/husband under Section 125(4) of the Cr.P.C.

11. The determination of the aforesaid question brings to me next question as to whether the amount of monthly maintenance of Rs.1,200/- to the non-applicant No.1/wife and Rs.800/- to the non-applicant No.2/son, aged about 13 years is just and fair?

12. The Family Court has considered the entire facts and circumstances of the case, granted monthly maintenance of Rs.1,200/- to the non-applicant No.1/wife and Rs.800/- to the non-applicant No.2/son. Considering the facts and circumstances of case and taking into account food, clothing and schooling and the amount needed to grow a child, a sum of Rs.2,000/- per month (Rs.1,200/- per month to the non-applicant No.1/wife and Rs.800/- per month to the non-applicant No.2/son) is on lower side and it cannot be said to be on higher side.

13. As a fallout and in consequence of aforesaid discussion, both the criminal revisions (Criminal Revision Nos. 364/2015 & 370/2015) deserve to be and are accordingly dismissed.

Sd/-

(Sanjay K. Agrawal)
JUDGE