

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 89 of 2010

Kamlesh S/o Bishouha Ram Dhankar R/o Village Mokhli, PS
Lalbag, Rajnandgaon **----Applicant**

Versus

1. Ku. Nageshwari , D/o Jograi Sahu, aged about 18 years, R/o Village Mokhli, Tahsil Rajnandgaon, District Rajnandgaon (C.G.)
2. Kamin Bai D/o Kamlesh Kumar Minor Through Natural Guardian Mother Nageshwari Bai R/o Vill. Mokhli, Rajnandgoan **---- Respondents**

For Applicant	:	Mr. Anup Majumdar, Advocate.
For Respondents	:	Mr. H.S. Ahluwalia, Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

25/01/2016

Heard.

1. This petition is directed against order dated 31.12.2009 passed by the Family Court awarding maintenance to the legitimate child, though rejecting application of respondent Nageshwari.

2. Learned counsel for the applicant argued that the Court below without making due and proper enquiry and without affording proper opportunity to lead evidence arrived at the conclusion without any cogent evidence that Kumari Kamin Bai (the then aged about 3 months) was born out of the relation of the applicant with Nageshwari. He submits that the declaration in the birth certificate Ex.P/3 is unilateral and it was not done by the applicant. The declaration Ex.P/2 given by father of the applicant is not binding on him. Without any scientific investigation and report on record, the Court below could not have come to the conclusion regarding applicant's parentage of the child. The applicant was subjected to prosecution for alleged

commission of offence under Section 376 IPC against Kumari Nageshwari. The applicant was acquitted of the criminal charges, therefore, it could not be said that the relationship of the applicant with Kumari Nageshwari was established leading to birth of Kamin Bai, the minor child. He submits that number of letters which were written by the applicant Annexure A/2 and A/3 were not taken into consideration.

3. Learned counsel for the respondent supports the impugned order.

4. The enquiry in the matter of granting maintenance under Section 125 Cr.P.C is summary in nature. In order to award maintenance to legitimate child Kamin Bai aged about 3 months, the Family Court has relied upon the testimony of Nageswari, birth certificate of the declaration of applicant's father. In the opinion of this Court, these material constitute a prima facie case for award of maintenance in a summary enquiry. Therefore, I am not inclined to interfere with the order. It will be open for the applicant to seek appropriate declaration against the respondent in civil proceedings.

5. With the aforesaid observations, the criminal revision is dismissed.

Sd/-

(Manindra Mohan Shrivastava)

J U D G E