

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 361 OF 2014

Ravindra Kujur S/o . Rupan Say Aged About 38 Years , Caste Uraon, R/o. Vill. Paraghati, P.S. Kapu, Tah. & Distt. Raigarh (C.G.), Present R/o. Vetnory Hospital, Vill. Bataikela, P.S. Kansabel, Tah. & Distt. Jashpur, Civil and Revenue District Jashpur (CG).

... Petitioner

Versus

Smt. Phoolkunwari Kujur W/o . Ravindra Kujur Aged About 34 Years, Caste Uraon, R/o. Vill. Darrapara, P.S. Kapu, Tahsil & Distt. Raigarh (C.G.) At Present R/o. Vill. Bandiyakhar P.S. & Tah. Pattalgaon, Distt. Jashpur (C.G.)

... Respondent

For Appellant	:	Shri Ratnesh Agrawal, Advocate.
For Respondent	:	Shri JK Saxena, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

29.07.2016

1. The present revision has been preferred challenging the award dated 22.04.2014 passed by the Additional Sessions Judge, Kunkuri, Distt. Jashpur, in Revision Case No.10 of 2013 whereby the revisional court has allowed the revision preferred by the respondent-wife and an amount of Rs.2500/-per month has been granted as maintenance against the petitioner-Husband.
2. The facts in brief necessary for adjudication of this revision are that, respondent Phoolkunwari had filed an application under Section 125 Cr.P.C. seeking for maintenance from the petitioner. According to respondent, the petitioner and the respondent had entered into a wedlock on 21.05.1989 and from the said date they stayed together as husband and wife till 1999. Subsequently, it is stated that on

account of illicit relationship that the petitioner had with one Gita, she was compelled to leave the matrimonial house and started living separately. Though she started living separately in the year, 1999 onwards, but filed an application under Section 125 CrPC in the year, 2006 which got registered as Misc. Criminal Case No.79/2006 before the court of Judicial Magistrate First Class, Pathalgaon, Distt. Jashpur. The trial court after conclusion of pleadings and evidence, vide order dated 08.02.2013 rejected the claim application of the respondent-wife holding that she has not been able to prove her case so far as there being valid marriage with the petitioner is concerned.

3. This order dated 08.02.2013 passed by the trial court was put to challenge by way of revision before the court of Additional Sessions Judge, Kunkuri which was registered as Revision Case No.10 of 2013. The revisional court, taking into consideration the entire factual matrix of the case and also considering the evidence which has been led before it, reached to the conclusion that the respondent-wife infact has been able to establish her case so far as marriage between the petitioner and respondent is concerned. It also found that there was sufficient documentary proof which had been brought before the court below to conclusively prove the relationship of husband and wife between the petitioner and respondent. In addition, the pleadings of the husband itself clear gives an indication and from which a strong inference can be derived of the husband and wife relationship thus had finally allowed the revision vide order dated 22.04.2014 holding that petitioner-husband shall pay an amount of

Rs.2500/- per month as maintenance to the respondent-wife. Hence this revision petition by the petitioner-Husband.

4. Assailing the impugned order dated 22.04.2014 passed by the revisional court, the petitioner submits that infact the revisional court has failed to consider the fact that the respondent had sufficient means to sustain herself, and therefore, the application under Section 125 CrPC filed by the respondent ought to have been rejected. Secondly, though the respondent was living separately from the year 1999, she has filed original claim application after more than 7-8 years which itself was sufficient that she was able to sustain herself. It is next contended that infact there is no valid marriage between the petitioner and the respondent and the respondent infact is a cousin sister of the petitioner, and therefore, under customary practice also it was not permissible for them to enter marriage and that entire application of the respondent-wife was baseless and concocted. It was also contended that the respondent has left the company of the petitioner without any rhyme and reason and that she had no valid and justified grounds for leaving the house of petitioner.
5. In support of his contention, counsel for the petitioner relied upon the decision of this court in case of Mayaram Nishad Vs. Jamuna Bai, reported in 2009 (2) CGLJ, 493, wherein according to the petitioner, wife was not entitled for maintenance on the basis of an agreement to live separately between the parties, while in the instant case there was an admitted fact of "Chhorchhutti" adopted by the petitioner-husband which is a customary practice of living separately and which

also gives a right under the customary practice of entering into a fresh marriage with someone else. Thus, the award passed by the appellate court deserves to be set aside.

6. Per contra, learned counsel appearing for the respondent justifying the order of revisional court submits that perusal of records produced before the court below it is evidently proved that there were more than a couple of documentary proofs which have been admitted by the husband himself by which it could be easily determined that there was infact a relationship of husband and wife between the petitioner and respondent. During the course of evidence there was admission on the part of the husband of the name of the Phoolkunwari to have been entered in the service book as his wife. Secondly, there is also entry of Phoolkunwari's name in all the life insurance related documents of the petitioner where also the name of respondent has been reflected as wife. Likewise, there is also a Ration Card prepared of the petitioner wherein the name of respondent Phoolkunwari has been reflected as wife of the petitioner.
7. These documents are sufficient to proof of their being a valid marriage between the petitioner and the respondent. Further, from the deposition of petitioner it clearly indicates that it was in the year, 1999 that the respondent Phoolkunwari had left his company. It is also an admitted position that it was during the said period that the petitioner had got one Gita as his second wife and from this Gita admittedly the petitioner had two children. Thus, there is ample evidence by which it can be clearly reflected that these were good

and valid grounds for the wife to live separately and under the said circumstances if the wife stays separately even after their being customary "Chhorchhutti" between the parties, the petitioner cannot disown the claim of the respondent-wife for maintenance. Thus, prayed for rejection of the revision.

8. Having considered the rival contentions put forth by the either side and on perusal of record it admittedly shows that there were no complaint whatsoever for the petitioner while he kept the respondent as his wife with him from 1989 to 1999. During these period, the petitioner had also brought the name of respondent Phoolkunwari as wife in his service records, life insurance policies as also in the Ration Card. These are material documents which were very much in possession of the petitioner and which was got prepared by the petitioner himself. During these period the petitioner did not realize of the fact whether she could be his wife or not on account of there being some distant relationship among the two. In addition, the petitioner in his deposition admits the fact that there was customary meeting held at village level wherein he got separation from the respondent under customary practice of "Chhorchhutti". He also admits the fact that Chhorchhutti means divorce and it also means the wife and the husband are entitled to lead independent life and are also permitted to enter into marriage with some other person.
9. These are all sufficient proof of there being a valid marriage between the petitioner and the respondent and in the eyes of law that marriage still exists as there has been no legal divorce taken place

between the parties. The respondent for all practical purpose continues to be the first wife of the petitioner and therefore would be entitled for the maintenance in the capacity of being the wife of the petitioner. Lastly, the admitted fact in the present case which is also reflected from the deposition of the petitioner stating that in the year, 1999 when the respondent left the house, he again remarried with Gita and from which he has two children and he is still staying with Gita and two children. This, by itself is sufficient ground for a lady to leave the matrimonial house and stay separately.

10. The judgment cited and relied upon by the petitioner is entirely different from the facts of the present case and as such the same is distinguishable.
11. For the aforesaid reasons, this court is of the opinion that the revisional court has not committed any illegality or infirmity while reaching to the conclusion of the respondent being entitled for maintenance and granting Rs.2500/- per month as maintenance.

Sd/-
(P. Sam Koshy)
JUDGE