

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.526 of 2014**

Chandraprakash Chandel, S/o late Arjun Singh Chandel, aged about 55 years, R/o Assistant Training Officer, ITI, Korba, PO & PS Distt. Korba (CG).

---- PETITIONER**Versus**

1. Smt. Neema Chandel, W/o Chandra Prakash Chandel, aged about 40 years.

2. Ankur S/o Chandra Prakash Chandel, aged about 20 years,

Both residents of Kumharpara, Jagdalpur, District Bastar (CG).

---- RESPONDENTS

For Petitioner	:	Shri Vivek Chopra, Advocate.
For respondents	:	Shri Ravindra Sharma, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****11/07/2016**

- By way of the present revision petition, the petitioner has assailed the order dated 18.07.2014 passed by the Family Court, Jagdalpur, in Misc. Case No.134 of 2013. By the said order, the Family Court in a proceeding under Section 125 Cr.P.C. while allowing the said application has granted maintenance amount to the non-applicant No.1 by awarding Rs.5000/- per month to be paid by the petitioner.
- The sole ground raised by the petitioner while assailing the said order of the Family Court was on the ground of non existence of the relationship of Husband and Wife between the petitioner and the

respondent No.1.

3. Learned counsel appearing for the petitioner submits that he has never married the respondent No.1 and there exist no husband and wife relationship between the two. He further makes a statement that at no point of time there has been any cohabitation between the two for the respondent No.1 to claim that she was given status of a wife by the petitioner. Further, the petitioner has challenged the finding of the court below alleging non consideration of the specific stand by him before the family court that the respondent No.1 being kept in the house of the petitioner while he was posted at ITI Bastar as a maid so that the respondent No.1 could take care of petitioner's mother who was not keeping good health during those days and subsequently in a couple of years he got transferred from Bastar and has been posted at Korba since long. At Korba there is no relation whatsoever between them and neither has she joined him as maid or as his wife or so called live in relationship between the petitioner and the respondent No.1 all along his posting at Korba.
4. It is also emphasized by the petitioner on the fact that the respondent No.1 has infact filed the claim petition only with an intention of extorting money from the petitioner. Apart from that, there is no consideration whatsoever. He submits that had the respondent No.1 been wife of the petitioner or for that matter the respondent No.1 had a long cohabitation with the petitioner and had been staying with him as husband and wife then, why did she not file claim petition earlier and why at this belated stage of over 20 years she is now filing the claim application and how

was she maintaining herself for all these period, more particularly when she was residing at Bastar while the petitioner was working at Korba for almost two decades.

5. Counsel for the petitioner drawing contentions to the pleadings and evidence which have come before the court below submits that the pleadings and evidence of the respondent No.1 in the claim before the court below was so incomplete by which itself it has to be clearly inferred that there was no husband and wife relationship between the two. He further went on to submit that respondent No.1 infact has not been able to give details of the marriage that took place between the two by providing the date & place of marriage and also witness to the said marriage etc. and in the absence of any such cogent evidence being adduced by the respondent No.1, the court below could not have drawn inference against the petitioner while allowing the claim application. By drawing attention of the court towards documents which have been exhibited before the court below it is submitted that on a couple of places the name of the father of respondent No.2 has been reflected to be one Suresh Kumar and based on the said entry the petitioner intended to assail the impugned order stating that it was not the petitioner who was the husband of the respondent No.1, but it was one Suresh Kumar.
6. According to counsel for the petitioner, since the petitioner being the respondent in the court below have categorically denied the contentions and allegations made in the claim petition particularly in respect of marriage and relationship as husband and wife between them, the

burden of proof gets shifted upon the wife and it was she who had to establish her case before the court by adducing cogent, strong and satisfactory evidence firstly establishing the marriage or at least establishing the fact that they had been staying together for a considerable long period cohabiting as husband and wife.

7. Counsel for the petitioner, to sum up, submitted that in the absence of establishing the relationship between the petitioner and respondent No.1, the findings of the court below is bad in law, perverse and deserves to be quashed.
8. Per contra, learned counsel appearing for the respondents opposing the petition submits that the order impugned is by itself a speaking order dealing with all the contentions and the submissions being raised by the petitioner in the instant petition. According to him, the court below has dealt with each and every issues raised by the petitioner and have discussed it at length while reaching to the conclusion that in fact the petitioner and respondent No.1 had been staying together and cohabiting for the period while he was posted at ITI Bastar.
9. Counsel for the respondents further justifying the impugned order submits that a perusal of the order by itself would reveal that the finding of the court below was based on the evidence which have come on record and that there is sufficient evidence by which it can be said that the petitioner and respondent No.1 had been cohabiting together all along during his tenure at ITI Baster.
10. He further relied upon the evidence of PW-2, Hiramani, PW-3, Suresh Kumar who have substantiated the contention of the respondent No.1-

wife proving her case before the court below to the extent of their being petitioner and respondent No.1 having maintained a relationship of husband and wife while the petitioner was posted at Bastar. Further, drew the attention of the court to the deposition of DW-1, Ankur, examined as defence witness by the petitioner. DW-1 is the alleged son of petitioner of his relationship that he had with the respondent No.1 and DW-1 is infact the respondent No.2 before this court and was the applicant No.2 in the court below. That in the course of evidence before the court below, DW-1, Ankur, has infact not supported the case of the defence i.e. petitioner. On the contrary, DW-1 has clarified the relationship of the petitioner that he had with the respondent No.1 and that the petitioner was his father. The name of Suresh which is reflected in the school record at Bastar also was not infact of DW-1's father, but was his uncle's name endorsed in the records in the capacity of guardian while the petitioner was posted at Korba and DW-1 and his mother were at Bastar. PW-3, Suresh who appeared before the court below has denied of his having any sort of relationship of husband and wife with the respondent No.1, rather, he had deposed before the court below stating that they were brothers and sisters in relationship and since the petitioner had deserted the respondent No.1, the said witness PW-3, Suresh had been assisting the respondent No.1's family. Ex. P/9 is the voter I.D. of respondent No.1 which also shows that it is the petitioner who has been projected as husband of respondent No.1.

11. Having considered the rival contentions put forth by the counsel appearing on either side and on perusal of records, it would be

necessary to refer to a couple of judicial pronouncements passed by the Supreme Court so far as the law relating to one under Section 125 Cr.P.C. is concerned.

12. The Supreme Court in case of *Chanmuniya Vs. Virendra Kumar Singh Kushwaha & Another*¹ has held that, the provision of Section 125 Cr.P.C. is a measure of social justice enacted with an intention of prevention of vagrancy and destitution, especially enacted to protect and inhibit neglect of women, children, old and infirm and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. Referring to its earlier decision passed in case of *Vimla Vs. Veeraswamy*² it is held that, the provision of Section 125 Cr.P.C. is meant to achieve the social purpose and the object by providing speedy remedy for the supply of food, clothing and shelter to the deserted wife. It went on to decide the fact that a women not having a legal status of wife was also brought within the inclusive definition of term wife. Consistent with the objective, in paragraph 24 & 25 in case of *Chanmuniya (Supra)*, the Supreme Court has observed as under :

“24. Thus, in those cases where a man, who lived with a woman for a long time and even though they may not have undergone legal necessities of a valid marriage, should be made liable to pay the woman maintenance if he deserts her. The man should not be allowed to benefit from the legal loopholes by enjoying the advantages of a de facto marriage without undertaking the duties and obligations. Any other interpretation would lead the woman to vagrancy and destitution, which the provision of maintenance in Section 125 is meant to prevent.

25. The Committee on Reforms of Criminal Justice System, headed

1 2011 (1) SCC 141

2 1991 (2) SCC 375

by Dr. Justice V.S. Malimath, in its report of 2003 opined that evidence regarding a man and woman living together for a reasonably long period should be sufficient to draw the presumption that the marriage was performed according to the customary rites of the parties. Thus, it recommended that the word 'wife' in Section 125 Cr.P.C. should be amended to include a woman who was living with the man like his wife for a reasonably long period.

13. Again the Supreme Court in paragraph-27 referring to decision passed in Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit³ it has been held that the standard of proof of marriage in a Section 125 proceeding is not as strict as is required in a trial for an offence under Section 494 IPC. It was further held that maintenance cannot be denied where there was **some evidence** on which conclusions of living together could be reached (emphasis made by this court).

14. Lastly, in paragraph 42 of the said judgment, the Supreme Court has held that 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 a reasonably long period of time, and strict proof of marriage should not be a pre-condition for maintenance under Section 125 of the Cr.P.C.

15. Likewise, the Supreme Court again in case of Badshah Vs. Urmila Badshah Godse & Another⁴ has held that the provision of 125 Cr.P.C. pertaining to grant of maintenance is a social justice legislation, distinct approach has to be adopted while dealing with cases under the said provision. In paragraph 14 & 15, it was observed as under:

“14. Of late, in this very direction, it is emphasized that the

³ 1999 (7) SCC 675

⁴ 2014(1)SCC 188

Courts have to adopt different approaches in “social justice adjudication”, which is also known as “social context adjudication” as mere “adversarial approach” may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently:

“It is, therefore, respectfully submitted that “social context judging” is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the social-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party if the imbalance were not to result in miscarriage of justice. This result is achieved by what we call social context judging or social justice adjudication.”[5]

15. Provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from “adversarial” litigation to social context adjudication is the need of the hour.”

16. In paragraph 18 of same judgment, the Supreme Court has further held that, we are of the opinion that there is a non-rebuttable presumption that the legislature while making a provision like Section 125 CrPC, to fulfil its constitutional duty in good faith, had always intended to give relief to the woman becoming “wife” under such circumstances. In paragraph-20 it was further held, If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under

Section 125 CrPC, such a woman is to be treated as the legally wedded wife.

17. In the light of aforesaid judicial pronouncements if we look into the evidence which have come on record, one cannot fail to take note of the fact that the respondent No.2 who was the claimant No.2 before the court below, was examined as defence witness No.1 at the behest of the petitioner and the said witness has infact deposed against the petitioner and has clarified before the court below many of the contentions which were made as issues by the petitioner for the purpose of denying the claim of respondent No.1. If we further peruse the award impugned, it also reveals that respondent No.1-wife had also moved an application before the court below for getting DNA test conducted of the petitioner so as to ascertain the paternity of the respondent No.2, which though was rejected by the court below for having been filed at a belated stage. On one hand the respondent No.1-wife was ready for DNA test to be conducted, at the same time, the petitioner-Husband did not make any effort whatsoever for accepting the challenge of DNA test. It was also taken note of the fact that the petitioner in spite of vehemently opposing the relationship that he had with respondent No.1, disowned her both as wife as well as a cohabiting partner and also disagreed for a DNA test to be conducted so that many of the issues would have been got determined in the process. At the same time, the court below took note of the fact that when the wife had moved an application for DNA test, the petitioner had strongly opposed such an application and this leads the court to

draw an adverse inference against the petitioner so far as the relationship that he had with the respondent No.1 while he was posted at ITI Bastar.

18. For all the aforesaid facts and circumstances of the case, this court is of the opinion that the court below has not committed any error of law or fact while reaching to the conclusion in allowing the claim application under Section 125 CrPC in favour of the respondent No.1-wife.
19. Accordingly, the revision petition being devoid of merit is liable to be and is hereby dismissed. No order asto costs.

Sd/-
(P.Sam Koshy)
JUDGE