

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 1066 of 2015**

Shailendra Verma son of Naresh Verma, aged about 30 years, resident of village Bodhaikunda, Police Station Pipariya, Tahsil kawardha, District Bakirdham, CG

---- Applicant**Versus**

Smt. Indrani Bai wife of Shailendra Verma, aged about 26 years, resident of village Bodhaikunda, Police Station Pipariya, Tahsil Kawardha, District Kabirdham, CG

---- Respondent

For Applicant	:	Shri D. C. Verma, Advocate
For Respondent	:	Shri P. P. Sahu, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****04/07/2016**

The present revision petition has been preferred by the applicant assailing the order dated 07.10.2015 passed by the Family Court, Kabirdham (Kawardha) in Misc. Judicial Case No. 159/15 whereby the Court below in a proceeding under Section 125 CrPC has granted an amount of Rs.1,000/- per month as maintenance to the respondent.

2. The fact in nutshell is that in the year 2014, the applicant is said to have married the respondent under the customary practice of 'Chudipratha' which is an accepted form of marriage among the people in some part of the State of Chhattisgarh. As per the respondent wife, the applicant had kept her as his wife for about 15 months. Thereafter, the applicant and his family members started ill-treating her and subjected her to cruelty, torture and harassment and created an atmosphere which the respondent could not sustain any further and therefore she was compelled to leave her matrimonial home. Since she did not have sufficient source of

income, she was forced to initiate a proceeding under Section 125 CrPC seeking for maintenance before the Family Court, Kabirdham. The applicant who was the non-applicant before the Family Court upon notice entered appearance and denied all the contentions, averments and allegations made against him under Section 125 CrPC before the Family Court. After pleadings were complete and the evidences were recorded, the Court below finally vide impugned order dated 07.10.2015 allowed the application of the respondent wife and ordered the applicant to pay an amount of Rs.1,000/- per month as maintenance to the respondent leading to the filing of the present revision petition.

3. Assailing the said impugned order before this Court the applicant solely challenges the maintainability of the claim application on the ground that the respondent wife was not his legally wedded wife and therefore she would not be entitled for maintenance. According to the counsel for the applicant, the concerned Section i.e. 125 CrPC is meant only for the legally wedded wife and that the makers of the law had specifically referred the term wife for the purpose of moving an application under Section 125 of CrPC. Therefore, the present respondent for the reason that she was not the legally wedded wife would not have been entitled for maintenance. According to the counsel for the applicant, there was a categorically denial by the applicant in his pleadings before the Family Court denying any sort of acquaintance with the respondent by which she could have claimed for maintenance from the applicant. He emphasized upon the fact that since the applicant was already a married man having two grown up children and that he was living with his family which itself establishes the fact that the respondent was not the legally wedded wife for claiming maintenance. Counsel for the applicant relied upon the decision of the Supreme Court reported in (2005) 3 SCC 636 (Savitaben

Somabhai Bhatiya v. State of Gujarat and Others) wherein in paragraphs

-8 & 15 it has been held that:

“8. There may be substance in the plea of learned counsel for the appellant that law operates harshly against the woman who unwittingly gets into relationship with a married man and Section 125 of the Code does not give protection to such woman. This may be an inadequacy in law, which only the legislature can undo. But as the position in law stands presently there is no escape from the conclusion that the expression “wife” as per Section 125 of the Code refers to only legally married wife.”

15. In *Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav* case ¹ it was held tht the expression “wife” used in Section 125 of the Code should be interpreted to mean only a legally wedded wife. The word “wife” is not defined in the Code except indicating in the Explanation to Section 125 its inclusive character so as to cover a divorcee. A woman cannot be a divorcee unless there was a marriage in the eye of the law preceding that status. The expression must therefore be given the meaning in which it is understood in law applicable to the parties. The marriage of a woman in accordance with Hindu rites with a man having a living spouse is a complete nullity in the eye of the law and she is therefore not entitled to the benefit of Section 125 of the Code or the Hindu Marriage Act, 1955 (in short “the Marriage Act”). Marriage with a person having a living spouse is null and void and not voidable. However, the attempt to exclude altogether the personal law applicable to the parties from consideration is improper. Section 125 of the Code has been enacted in the interest of a wife and one who intends to take benefit under sub-section (1) (a) has to establish the necessary condition, namely, that she is the wife of the person concerned. The issue can be decided only by a reference to the law applicable to the parties. It is only where an applicant establishes such status or relationship with reference to the personal law that an application for maintenance can be maintained. Once the right under the provision in Section 125 of the Code is established by proof of necessary conditions mentioned therein, it cannot be defeated by further reference to the personal law. The issue whether the section is attracted or not cannot be answered except by reference to the appropriate law governing the parties.”

4. Counsel for the applicant refers to the statement of the respondent wife made before the Court below wherein she says that she was informed by the applicant of having left his first wife adopting the practice of ‘Chhodchhuti’ which legally does not amount to a lawful divorce. Therefore, for all practical purposes, the marriage between the applicant

¹ (1988) 1 SCC 530

with his first wife would remain valid and as long as the marriage legally survives, the present respondent would not be entitled for claiming maintenance under Section 125 CrPC. Lastly, counsel for the applicant submits that the applicant is working as a labour and does not have any strong source of income to maintain himself and therefore, the amount of maintenance awarded by the Court below is beyond his paying capacity. Hence, prays for interference with the impugned order.

5. Per contra, counsel for the respondent opposing the petition vehemently submits that it is a case where the applicant made the respondent believe that there was a divorce between the applicant and his first wife Shivrani and since he had separated from his first wife, he was keen to keep the respondent as his wife. It was for this reason the respondent applying the customary practice of Chudipratha entered into a relationship and started living with the applicant as husband and wife. Counsel for the respondent referred to a notarized document executed between the applicant and the respondent as early as on 07.10.2014, the acknowledgement of which has been accepted by the applicant in his evidence of the said document bearing his signature marked as Exhibit A-1. Counsel for the respondent further referred to the document Ex. A-5 which is an Adhar card of the respondent wherein also the name of the applicant has been reflected as the husband of the respondent.

6. Counsel for the respondent relied upon the evidence adduced by the applicant wherein one of the witnesses adduced on behalf of the applicant namely Arun Kumar Verma in his cross-examination has accepted the fact that about a year back, the applicant had married the respondent as per the customary practice of Chudipratha. This witness has also accepted the fact in his cross-examination that the stamp paper was duly executed acknowledging the marriage.

7. Counsel for the respondent relied upon the judgment of the Supreme Court passed in the case of *Badshah v. Urmila Badshah Godse and Another* reported in (2014) 1 SCC 188 wherein in very categorical terms it has been held that if a person performs a second marriage during subsistence of the first marriage without revealing the fact of his earlier marriage and has duped the second wife, he cannot deny maintenance to her. Counsel for the respondent referring to the said judgment submits that so far as the provision under Section 125 CrPC is concerned, it is a social justice legislation and a distinct approach has been ordered to be adopted while dealing with the case under the said provision. Counsel for the respondent drew the attention of this Court to the cross-examination of the present applicant who was the non-applicant before the Court below wherein he has accepted the fact that he had executed a notarized document with the respondent to establish the marriage under Chudipratha and in the said document Ex.A-1 the applicant has also accepted endorsing his signature. The applicant has also categorically mentioned that under the customary practice of Chhodchhuti his first wife Shivrani had got herself separated and that both he and the respondent do not have any wife and husband respectively which made them marry each other. Hence, counsel for the respondent prays for dismissal of the present revision petition.

8. Having considered the rival contention put forth by the counsel appearing on either side and on perusal of the records what is apparently clear is that the applicant had in fact adopting the customary practice of Chudipratha married the respondent and for a considerable period of time they lived as husband and wife. Simultaneously, there is also documentary proof of the existence of a Chudipratha marriage. Likewise, there is also an independent witness to establish the fact that the applicant and the respondent had stayed as husband and wife after performing

marriage under the customary practice of Chudipratha. The respondent in her statement has said that the applicant had informed her about the separation that he had with his first wife under the customary practice of Chhodchhuti and she was made to believe that the applicant was a divorcee and therefore she entered into a relationship with him. This fact is also proved and established from document Ex.A-1. The other documents which have come on record particularly the Adhar card of the respondent wherein also there is the name of the applicant further establish her case that there was a husband and wife relationship between the applicant and the respondent. Under the said factual background and the law laid down by the Supreme Court in this regard in the case of Badshah (Supra), this Court is of the opinion that there has been no illegality or perversity committed by the Court below in reaching to the conclusion that the respondent wife was entitled for maintenance.

9. So far as the amount awarded by the Court below as maintenance is concerned, the amount awarded is of only Rs.1,000 per month which by itself no stretch of imagination can be held to be exorbitant or on the higher side as it comes to around only Rs.33/- a day which in today's cost of living is too meager an amount to sustain decently.

10. For the foregoing reasons, the instant Criminal Revision being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE