

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 713 of 2016

- Omprakash Sakar, aged 24 years, S/o Ramkumar Sakar, R/o Village P.O. and O.P. Sannjari, Tahsil and District Balod, (C.G.).

---- Applicant

Versus

1. Sunita Sakar, aged 24 years, W/o Om Prakash Sakar,
 2. Samar Sakar @ Ravi Sakar, aged 3 years, S/o Omprakash Sakar, Minor Through The Natural Guardian Mother Sunita Sakar, W/o Omprakash Sakar,
- Both are R/o Village Koliyari, Tahsil and District Dhamtari (C.G.).

---- Respondents

For Applicant : Shri Ritesh Verma, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

01/08/2016

1. The present criminal revision has been filed challenging the order dated 03/06/2016 passed by the Family Court, Dhamtari (C.G.), in M.J.C. No. 82/2015. By way of the said impugned order the Family Court, Dhamtari had allowed an application under Section 125 of the Cr.P.C. granting Rs.1200/- to the non-applicant No.1 wife and Rs. 800/- to the non-applicant No.2 son. The solitary ground of challenge by the applicant to the said order is the ground that there is no valid marriage with the non-applicant No.1. According to counsel for the applicant the present non-applicant No. 1 wife was already married lady and her husband was alive and that marriage had not legally

been dissolved by any of the Court of law. Therefore the Court below could not have allowed the application under Section 125 of the Cr.P.C. Counsel for the applicant further submits that for a proceeding to be drawn under Section 125 of the Cr.P.C. the necessary ingredients is that there has to be husband and wife relationship between the two disputing parties and for which there has to be a legal marriage between the parties. Counsel for the applicant further submits in support of his contention relied the judgment which is reported in *AIR 1998 SC page 644* .

2. Perusal of the record, particularly the impugned order would clearly reflects that there has been specific averment made by non-applicant No.1 wife before the Family court stating that the applicant had duly performed the marriage with her and that since there was a marriage duly performed by the applicant with the non-applicant No. 1 wife cannot be denied maintenance. The applicant who had deserted the non-applicant No.1 wife after she had conceived from the relationship that he had with non-applicant No. 1 who later on gave birth to a male child. The further finding of fact of the Court below is the evidence of PW-2 Shyamlal, who is the President of the Society he had specifically stated before the Court below that there being a valid meeting held between the parties and in the course of the meeting applicant has accepted for keeping the non-applicant No.1 as his wife and later on at the behest of the Sonkar Society there was also an customary marriage performed between them.

Even otherwise the Court below has given full reasons and

justification while allowing the application. In the opinion of this Court it is well reasoned order which does not warrant interference.

3. The Supreme Court in case of ***Chanmuniya Vs. Virendra Kumar Singh Kushwaha & Another 2011 (1)SCC 141*** 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 1991 (2) SCC 375*** 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 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.

4. 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.
5. Thus, this Court is of the opinion that there is no illegality committed by the Court below while granting the maintenance to the non-applicants.
6. So far as the judgment cited by the counsel for the applicant much water has since flown, the judgments of Supreme Court in recent times categorically hold that cohabitation with the lady can also make her entitled for the grant of maintenance.
7. Accordingly, the present criminal revision being devoid of merits and same has been dismissed.

Sd/-
(P. Sam Koshy)
Judge