

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO. 407 OF 2016

1. Shakuntala Dewangan, W/o Sanjay Dewangan, aged 26, R/o Nirmala Sadan, Rambhanta, Raigarh, Tahsil and District Raigarh (C.G.)
2. Angel Dewangan, D/o Sanjay Dewangan, aged 1, through Guardian Mother Shakuntala Dewangan, R/o Nirmala Sadan, Rambhanta, Tahsil & District Raigarh (C.G.)

... Petitioners

Versus

Sanjay Dewangan, S/o Deepchand Dewangan, aged 29, Tahsil Raigarh, District Raigarh (C.G.)

... Respondent

For Petitioners	:	Ms. Rajni Soren, Advocate.
For Respondent	:	Mr. Vikram Dixit, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

16/11/2016

1. The present petition under Section 482 of CrPC has been preferred assailing the order dated 8.1.2016 passed by the Family Court, Raigarh in M.Cr.C. No. F-90/14, whereby the Court below in a proceeding under Section 125 of CrPC has rejected the claim application of the Petitioners.
2. Contention of the Petitioners in the present case was that the Court below has rejected the claim application on its technicalities and has not appreciated the evidences which have come on record in its proper perspective and has denied the rightful claim of maintenance which the Petitioner No.1 and her son, Petitioner No.2, deserve. It was further contended that the Court below has not properly appreciated the fact that the Petitioners did adduce the evidence of their near and dear ones so as to substantiate marriage which took place between Petitioner No.1 and Respondent and which too has not been properly appreciated by the Court below while rejecting the claim application vide the impugned order.

3. Ms. Rajni Soren, learned Counsel for the Petitioners, referred to the evidence of PW-2 Hetram as well as PW-3 Ku. Seema, who are uncle and sister of Petitioner No.1, who have stated before the Court below that they are aware of the fact that Petitioner No.1 was married to the Respondent and that on account of marital relationship that they had the Respondent No.2, minor Angel Dewangan, was born. Counsel for the Petitioner further submitted that this part of the evidence of PW-2 and PW-3 has not been properly taken note of by the Court below. According to the Counsel for the Petitioners the Court below ought to had been more liberal while considering the claim application and that it should have also discussed on the issue as to why the Petitioner No.1 would falsely implicate the Respondent No.1 seeking for maintenance and why the Petitioner No.1 would have caught hold of only the Respondent seeking for maintenance unless there would had been a relationship of husband and wife or a live-in relationship between Petitioner No.1 and Respondent. Thus, prayed for the setting aside of the impugned order and grant of maintenance or at-least the matter may be remitted back to the Court below for further appreciation of facts and passing of an order granting maintenance.

4. Per contra, Shri Vikram Dixit, learned Counsel for the Respondent, opposing the revision petition submits that the present revision petition is totally misconceived and is devoid of merits. According to the Counsel for the Respondent it was the case of the Petitioners seeking maintenance and therefore it was the responsibility and burden of Petitioner No.1 for proving and establishing her claim. Petitioner No.1 has miserably failed to lead cogent and proper evidence to substantiate her claim for grant of maintenance. It is a case where the Petitioners on both counts firstly in proving of there being a valid marriage between Petitioner No.1 and Respondent and secondly Petitioner No.1 has also failed to establish by

leading cogent and reliable evidence to show that there has been a long cohabitation between Petitioner No.1 and Respondent so as to draw an inference of a relationship for living together being there. He thus prayed for the rejection of the revision petition.

5. Having heard the rival contentions put forth on either side and on perusal of the records what clearly comes out from the evidences which have come before the Court below is the admission on the part of the witnesses examined during the course of evidence on behalf of the Petitioners. In addition, there is an admission of Petitioner No.1 herself in her cross-examination wherein she has accepted the fact that she does not have any proof of marriage that took place between Petitioner No.1 and Respondent. It was also found that there were certain material contradictions in her statement made in respect of the place of marriage as at one place she says that the marriage took place at Raigarh and at one place she accepts the marriage to have taken place at Chandrahasini Temple. Similarly, Petitioner No.1 also was not able to establish her having moved any application for registration of their marriage before the Marriage Officer at Raigarh.

6. Another aspect which cannot be brushed aside is the statement of PW-3, Ku. Seema, sister of Petitioner No.1, who has not been able to give specific details in respect of marriage of Petitioner No.1 with Respondent. PW-3, Ku. Seema, in spite of being sister of Petitioner No.1 has not been able to even state as to where the marriage had taken place and when. Likewise, PW-2, Hetram, uncle of Petitioner No.1, also has not been able to give any specific details in respect of marriage of Petitioner No.1 with Respondent. At one place in his cross-examination he has expressed his total ignorance about whether there was a marriage that took place between Petitioner No.1 with Respondent. Another vital fact which is

missing from the evidence on behalf of the Petitioners is the fact that none of the witnesses have stated that there was a long cohabitation between Petitioner No.1 and Respondent and from the said relationship the Petitioner No.2 was born.

7. In a proceeding under Section 125 of CrPC though it is a liberal legislation but the same cannot be stretched to the extent of drawing inference on the basis of presumption when in the evidence there is no iota of evidence or even a remote suggestion of there being long cohabitation between Petitioner No.1 and Respondent.

8. Counsel for the Petitioners at this juncture made a request that she may be permitted to move an application for holding DNA Test to ascertain the paternity of Petitioner No.2. In the opinion of this Court, this prayer of the Petitioners cannot be accepted for the reason that the Petitioners cannot be permitted to improve upon their case and seek for remittance of the case so as to fill up the lacuna in respect of a flaw that arose at the time of original claim case.

9. Thus, for the foregoing reasons, this Court has no hesitation in reaching to the conclusion that the Court below has not committed any infirmity or illegality nor can it be said to be an error of law to have been committed by the Court below while rejecting the claim application. The present revision petition has been filed assailing the said order and all that this Court has to see is whether the finding of the Court below is in accordance with the evidences which have come on record or not and this Court does not have any hesitation in reaching to the conclusion that the finding of the Court below is purely based on the evidences which have come on record.

10. The revision petition thus fails and deserves to be and is accordingly dismissed. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge

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