

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 423 of 2016**

- Fattechandra Satnami S/o Late Manrakhan Satnami Aged About 53 Years R/o Village Achholi, Thana Urla, Tahsil & District Raipur Chhattisgarh

---- Applicant**Versus**

- Smt. Sumitra Bai S/o Fattechandra Satnami (Kotwar) Aged About 44 Years R/o Naya Mangal Bazar, Danveer Mamashah Ward, Sarvjanik Bhavan Ke Pass, Gudhiyari, Raipur Tahsil & District Raipur Chhattisgarh

----Respondent

For Applicant
For Respondent

Mr. G.L. Verma, Advocate
Mr. Y.C. Sharma, Advocate

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****22.12.2016**

1. The present Petition has been preferred under Section 19(4) of the Family Court Act, 1984 assailing the order dated 30.03.2016 passed in M.J.C. No. 146/2013 by the Additional Principle Judge, Family Court, Raipur.
2. Vide the impugned order the Court below has in a proceeding under Section 125 of the Cr.M.P. while allowing the application has awarded an amount of Rs. 5,000/- per month as maintenance.
3. Assailing the impugned order learned Counsel for the Applicant submits that the Court below committed an error of both law and fact so far as the granting of maintenance is concerned. According to the Counsel for

the Applicant the Court below has failed to appreciate the fact that the Respondent has failed to establish the fact that there was any matrimonial relationship between the present Applicant and the Respondent. According to the Applicant the Respondent was never his wife. Nor he has ever married her neither has the Respondent been able to prove her marriage before the Court below by leading cogent evidence so as to invoke provisions of Section 125 of the Cr.P.C.

4. According to the Applicant in fact both the Applicant as well as the Respondent are married persons and have married to two different persons. The present Applicant is already married to a different lady. Likewise the Respondent Sumitra Bai also is a married lady and married to one Ram Gopal Banjare who has also entered into the witness box ascertaining the fact that the Respondent is his legally wedded wife and there is no legal divorce to have taken place between them. Therefore, they are, for all practical purpose husband and wife. Hence the maintenance application could not have been moved against the present Applicant. The only contention that the Counsel for the Applicant submits is that Respondent has filed a false claim against the present Applicant. He submits that he had given a portion of his house to the Respondent as tenant where she has stayed for a considerable period of time. Except for that, there is no relationship whatsoever. Thus, prayed for quashment of the impugned order.

5. Shri Y. C. Sharma, Counsel for the Respondent however submits that the evidence which have come on record by itself proves the relationship between the Applicant and the Respondent. According to Shri Sharma the present Applicant had performed marriage with the Respondent under the customary practice of "Chudi Vivah". According

to the Counsel for the Respondent the documents which have been produced during the course of the evidence by itself reveals the relationship which the Applicant had with the Respondent. From this marriage the Respondent have 3 grown up children who are being maintained by the Respondent.

6. So far as the said marriage under the Chudi Vivah Pratha is already stood established from evidence of the witness namely Jay Bahadur Banjare, the State President of the society to which the Applicant and the Respondent belong who has acknowledged having issued certificate Ex.P. A/13 in respect of the marriage between the two. Yet another evidence so far as the relationship between the Applicant and the Respondent gets established from the agreement which was entered into between them as early as in the year 2008 in respect of partition of certain properties belonging to the Applicant to be shared between the two i.e. between the Applicant and the Respondent.
7. According to the Counsel for the Respondent there are certain other documents also which were produced before the Court below like the certificate in respect of the children born to the Respondent from the marriage she had with the present Applicant. Also there is an identity card issued by the Election Commission depicting name of the present Applicant to be the husband and father of her children. Thus prayed for quashment of the impugned order.
8. Having considered the rival contentions put forth on either side and on perusal of the evidence which have come before the Court below the certain undisputed facts which arose is first the agreement of partition dated 26.09.2006 and 06.12.2008 which has been produced before the

Court below has Ex.P. A/8 and A/9 where there is a categorical admission of the status of the Respondent to be wife of the present Applicant which has not been disputed by the present Applicant. Neither has he challenged the same before any forum inspite of the fact that the said document existed since 2008 onwards. Likewise the school certificate so far as three children born to the Respondent from the present Applicant Ex.P. A/1 to A/3, the mark-sheets which discloses the present Applicant to be the father. In addition Ex.P. A/10 and A/12 which are also the identity cards issued by the Election Commission which also disclose the Applicant to be the husband of the Respondent and father of the grown up children. To further strengthen the case of the Respondent the evidence which has been adduced by the present Applicant of NAW-2 Ram Gopal Banjare is also relevant. This witness was brought by the present Applicant as his witness to establish the fact that the Respondent was already a married lady, married to the said witness Raj Gopal Banjare. However in his evidence of this NAW-2 he has accepted the fact that the Respondent was his Ex-wife. Though there was no legal divorce that has taken place between the two. But subsequent to the Respondent leaving the said NAW-2 he has entered into a second marriage with Urmila with whom he is still living. The Statement of NAW-2 establishes two things first the Respondent in the present case was is ex-wife and second he has already entered into the second marriage which shows his marriage with the Respondent does not exist. Even the evidence of NAW-2 has not contributed much in favour of the present Applicant.

9. So far as the quantum of maintenance amount awarded by the Court below and also the fact that the present Applicant is working as a

Aangan Badi worker having her own source of income is concerned, indisputably the present Applicant is a Kotwar, which he has accepted and also enjoying the benefits which a Kotwar enjoys. Once when the present Applicant enjoys the status of a Kotwar then for all practical purpose the Respondent wife also has right for maintaining herself in the capacity of being a wife of the Kotwar. Indisputably also an Aangan Badi worker gets remuneration of only Rs. 4,000/- monthly with which it is very difficult for a person to lead a decent standard of life commensurate to the wife of a Kotwar.

10. Taking into consideration the entire facts and circumstances of the case and also the status of the present Applicant being a Kotwar, this Court is of the opinion that the grant of Rs. 5000/- as monthly maintenance awarded by the Court below cannot be said to be exorbitant or on the higher side calling for any interference.

11. For the aforementioned reasons this Court is of the opinion that there is no illegality or infirmity committed by the Court below in passing the impugned order.

12. Thus, the present Revision being devoid of merits accordingly stands dismissed.

Sd/-

**(P. Sam Koshy)
JUDGE**