

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 803 of 2016**

- Bharat Sooryavanshi S/o Late Radhe Sooryavanshi Aged About 32 Years R/o Village - Semartal, Police Station - Koni, Tahsil & District (Revenue & Civil) - Bilaspur Chhattisgarh

---- Applicant**Versus**

1. Smt. Sunita Sooryavanshi W/o Bharat Sooryavanshi Aged About 28 Years R/o Village - Jalso, Police Station - Koni, Tahsil & District (Revenue & Civil) - Bilaspur Chhattisgarh
2. Vikas Sooryavanshi S/o Bharat Sooryavanshi Aged About 1 Years Minor Through The Mother (Legal Guardian) Smt. Sunita Sooryavanshi, R/o Village - Jalso, Police Station - Koni, Tahsil & District (Revenue & Civil) - Bilaspur Chhattisgarh

---- Non-applicants

For Applicant : Mr. Anand Kesharwani, Advocate

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****05/09/2016**

1. By way of the present Revision Petition the Applicant has assailed the order dated 23.06.2016 passed by the Family Court, Bilaspur in Miscellaneous Criminal Case No. 65/2013. The Court below in a proceeding under Section 125 CrPC allowing the same has awarded Rs. 1000/- to Non-applicant No.1 and Rs. 1200/- Non-applicant No.2 as maintenance amount for their sustenance.
2. Learned Counsel for the Applicant challenges the impugned order on the sole ground that Non-applicant No.1, Sunita Sooryavanshi is not

his legally wedded wife therefore she would not be entitled for maintenance under the provisions of Section 125 CrPC. It is also contended by the Counsel for the Applicant that his legally wedded wife is residing with him and that alone is a good reason for the claim of the Non-applicant No.1 to be refused.

3. Having considered the submissions put forth by the Counsel for the Applicant and a perusal of the impugned order what clearly reflects is the admission on part of the Applicant that he had entered into customary marriage known as 'Chudi Vivah' and after performing Chudi Vivah with Non-applicant No.1 there was a long cohabitation between the two. It is also admitted position that the Non-applicant No.2 was born from the relationship between the Applicant and Non-applicant No.1. Thus, there is no dispute on the paternity of the Non-applicant No.2 also.
4. At this juncture learned Counsel for the Applicant fairly admits that so far as Non-applicant No. 2 is concerned he is willing to pay the maintenance amount but the only objection is with regard to maintenance amount payable to Non-applicant No. 1 on the ground that she is not his legally wedded wife.
5. 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.
6. The Supreme Court in case of **Chanmuniya Vs. Virendra Kumar**

Singh Kushwaha & Another¹ 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 woman 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.

1 2011 (1) SCC 141

2 1991 (2) SCC 375

7. Likewise, the Supreme Court again in case of **Badshah Vs. Urmila Badshah Godse & Another**³ 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 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.”

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.”

8. In the present case the Applicant does not dispute the performance of “Chudi Vivah”. He further admits that Non-applicant No. 2 was born

3 2014(1)SCC 188

from the relationship between the Applicant and the Non-applicant No.

1. This Court in light of the decision of the Supreme Court in case of **Chanmuniya** (supra) and in case of **Badshah** (supra) and considering the facts and circumstance of the case is of the view that there is no illegality or infirmity in the order passed by the Court below. Once when there is an admission of having performed Chudi Vivah and also there has been a son born from the said relationship, this Court is of the opinion that for all practical purposes long cohabitation stands established and therefore Non-applicant No. 1 would be entitled for maintenance.

9. The Revision Petition being devoid of merits deserves to be and is accordingly dismissed.

Sd/-

(P. Sam Koshy)
JUDGE