

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

M.CR.C. No. 2237 of 2005

Smt. Parvati Bai, W/o. Shankar, aged 60 years, R/o. Sanjay Nagar, Bhilai,
P.S. - Supela, Tahsil and District – Durg (C.G.)

---- Applicant

Versus

Shankar, S/o. Gokul, R/o. Village- Mohtara, P.O. Deurgaoun, P.S. & Tahsil
– Saja, District – Durg (C.G.)

-----Respondent

For Applicant	: Mr. Amiyakant Tiwari, Advocate
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For Respondent	: None present.
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Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

11/10/2017

Heard.

1. This petition under Section 482 of Cr.P.C. has been brought with prayer to exercise inherent jurisdiction for grant of maintenance to the petitioner from respondent.
2. Petitioner filed an application under Section 125 of Cr.P.C. praying for grant of maintenance from respondent. The application was deiced by the Judicial Magistrate First Class- Durg in M.J.C. No.45/2000 on 19.09.2003, allowing the application and passing the order for payment of maintenance of Rs.1200/- per month in favour of the petitioner against the respondent. This order was challenged before the Court of Additional Sessions Judge, Durg in Criminal Revision No.344/2003, which was decided on 22.03.2004 by setting aside the order passed by the Judicial Magistrate First Class, Durg

with direction to give opportunity of hearing to both the parties and pass order afresh. Subsequent to that, the Court of Judicial Magistrate First Class, Durg heard the parties and decided the application by order dated 30.10.2004 in M.J.C. No.39/2004 and dismissed the application of the petitioner for grant of maintenance. This order was again challenged before the Court of Additional Sessions Judge, Durg in Criminal Revision No.415/2004, which has been rejected vide order dated 01.07.2005.

3. It is submitted by the counsel for the petitioner that impugned order and the order passed by the learned Judicial Magistrate First Class, Durg is erroneous and illegal, in which it has been wrongly held by the Court below stating that strict proof of marriage is required in this case. Marriage by Chhudi custom is recognized in this State. Learned Court below should have given this finding that petitioner is wife of the respondent and pass orders for maintenance. Hence prayed that order of maintenance be passed in favour of the petitioner.
4. Though the notice to respondent has been served but he is unrepresented.
5. I have heard the counsel for the petitioner and perused the documents placed on record.
6. The Court of Judicial Magistrate First Class, Durg has held in order dated 30.10.2004 that petitioner belongs to Kurmi caste and respondent belongs to Satnami caste. Chuudi marriage in different caste is not an accepted custom in the society. Learned revisional

Court has held that only on the statement of petitioner that marriage was performed by Chhudi custom is not sufficient and there was requirement of strict proof of marriage in accordance with personal law of the parties.

7. The petitioner – Parvati Bai (A.W.-1) stated before the Court that her marriage with respondent was performed 30 years prior to recording evidence before the Court. Respondent has taken a women named Sohaga as his concubine, thereafter, has tortured and driven out the petitioner from his house. In cross-examination, she remained firm on her statement that marriage was performed 30 years prior to the date of recording of evidence but she admitted that she had earlier married but had left her husband, who died subsequently. She denied that she performed marriage with a person other than respondent and has admitted that marriage with respondent took place by Chhudi custom after the death of her first husband. Further she admitted that marriage of Chhudi custom is not in practice, when marriage is to be performed by member of different communities.
8. Smt. Shashi Paswan (A.W.-2) has stated that petitioner and respondent are husband and wife. She has not made any statement as to performance of marriage as she has not witnessed the marriage of the petitioner. G.L. Sahu (A.W.-3), Section Officer of Bhilai Steel Plant has on the basis of document Ex.P/3 stated before the Court that respondent has given the name of the petitioner as nominee for his general provident fund account.
9. Defending the case, respondent Shankar (N.A.W.-1) has stated that

his first marriage was performed with Akalhin Bai, thereafter, his second marriage was performed with Sohaga Bai. Marriage with Parvati Bai was never performed. In cross-examination, he has been unable to explain as to for what reason, name of the petitioner is entered as nominee for his GPF account. He has not made any admission that petitioner is his wife. Santosh (N.A.W.-2), Harish Chandra (N.A.W.-3), Manaram Chandrakar (N.A.W.-4) have given statement in support of the respondent. J.S. Chandrakar (N.A.W.-5) has not stated about the marriage of the petitioner and respondent. Padam Parakh (N.A.W.-6) has stated about the previous marriage of the petitioner, which is not denied.

10. Considering the evidence on record, the statement of the witnesses of both the sides, although respondent categorically denies that no marriage was performed with petitioner, but statement of petitioner that her marriage was performed with respondent finds supports with official documents Ex.P/3 and Ex.P/4, which shows that respondent has given the name of petitioner as nominee for his GPF account. Respondent had been unable to explain about the entry of name of petitioner in official record. Case under Section 125 of Cr.P.C. does not require strict proof, in such case, if there is recognition in the society or in the community, that the parties reside as husband and wife is sufficient for the purposes the Section 125 Cr.P.C. The recognition of this marriage either by Chhudi custom or otherwise has come from the entries in the official record of the respondent, which is totally un rebutted evidence. Hence, in this case petitioner has successfully proved that marriage existed

between her and respondent.

11. The other statement of the petitioner is that she is unable to maintain herself and the respondent is man of means being employed in the Bhilai Steel Plant is not rebutted in evidence. Counsel for the petitioner places reliance on the judgment of this Court in case of *Smt. Motim Bai Borkar Vs. Arjun Singh Borkar*, passed in Criminal Revision No.547 of 2009 dated 13.01.2017. Taking into consideration the facts as available on record and the finding as aforesaid, this petition deserves to be allowed and it is hereby allowed. As there is no information about the current status of employment of respondent and his capability to pay maintenance, maintenance can be granted only in token form to show that petitioner has right to claim maintenance from respondent. This petition is allowed. Respondent is directed to pay Rs.1,000/- as maintenance per month to the petitioner from the date of passing of this order. Any application for varying and modifying the order of maintenance passed by this Court, can be filed before the Court of Judicial Magistrate First Class and Judicial Magistrate First Class shall have the authority to pass order for varying and modifying the order of maintenance in accordance with law without being affected by this order and there shall be no requirement to approach before Court again for any modification.
12. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge