

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Revision No. 96 of 2007**

1. Ram Kumari, wife of Sohan Kumar Sahu, aged about 21 years,
2. Ku. Panchbati, D/o Sohan Kumar Sahu, aged about 4 years (minor) through guardian, mother Ram Kumari Sahu. Both resident of village Kikirmeta, police station Ranchirai, Tahsil-Patan, District-Durg, Chhattisgarh.

---- Applicants

**Versus**

Sohan Kumar S/o Heeraman Sahu, aged about 26 years, resident of village Kikirmeta, police station Ranchirai, Tahsil-Patan, District-Durg, Chhattisgarh.

---- Respondent

---

|                    |   |                                                                  |
|--------------------|---|------------------------------------------------------------------|
| For the Applicants | : | Shri Praveen Dhurandhar, Advocate.                               |
| For the Respondent | : | Shri Rajeev Shrivastava and Shri Prateek Kumar Singh, Advocates. |

---

**Hon'ble Shri Justice Rajendra Chandra Singh Samant****ORDER****16.01.2017**

1. The applicant has brought this revision against the order dated 27.1.2007 passed in M.J.C. No. 401 of 2006 by the Learned Third Additional Principal Judge, Family Court, Durg, Chhattisgarh, whereby the application of the applicants under Section 125 of the Cr.P.C. was dismissed.

2. The applicants moved an application under Section 125 of the Cr.P.C. before the Court of Judicial Magistrate, First Class, Durg on 20.2.2003. After constitution of Family Courts, the case stood transferred to the Family Court, Durg. It was alleged in the application that applicant No.1 used to go to the house of the respondent for agricultural labour work. During which, intimacy

developed between applicant No.1 and the respondent which led to physical relationship between them. The respondent promised to marry applicant No.1 and on being convinced, applicant No.1 acceded to the wishes of respondent and had physical relationship with him. A formal marriage was performed between them before a photo of God. Due to regular sexual intercourse between them, applicant No.1 conceived and gave birth to applicant No.2. It was alleged, that the respondent is father of applicant No.2. A meeting of village committee was held where applicant No.1 made the aforesaid allegations, which were denied by the respondent in all particulars and the respondent refused to keep the applicants with him. On advice of the villagers, applicant No.1 lodged a report against the respondent for committing an offence of rape. On the basis of which, the respondent was prosecuted. The trial court acquitted the respondent holding that it was a matter of consent between applicant No.1 and the respondent. Respondent has denied responsibility to take care and maintain applicant No.2 as his child. In the application it was alleged that the applicants do not have any source of income and applicant No.2 has grown up to four years of age, but applicant No.1 is not in a position to provide her the necessary requirements like education etc. The respondent is owner of agricultural lands and has income of Rs.1,00,000/- per month. On these grounds, it was prayed that the applicants be awarded maintenance of Rs.3,000/- each per month.

3. The respondent in reply, has denied the allegations of the applicants. He has denied that he ever resided in the village where applicant No.1 has alleged, that they have met and had relation. He has categorically denied physical relationship with applicant No.1 and the paternity of applicant No.2.

It was admitted that the dispute between them was raised before the village meeting, in which the respondent explained very clearly that neither he had any physical relationship with applicant No.1 nor applicant No.2 is his daughter. It was stated that applicant No.1 lodged a false report which could not be proved in the court and the respondent was acquitted. It is denied that the respondent has any responsibility to take care and maintain the applicants. It is also stated that in the village meeting, the respondent proposed for DNA test and it was refused by applicant No.1. On these grounds, it was prayed that the application for maintenance by the applicants be rejected.

4. The court below after giving opportunity of being heard to both the parties has passed the order dated 27.1.2007, in which it was held, that even though the finding of the Sessions Court in Sessions Case No. 177 of 2000 that there had been sexual intercourse between applicant No.1 and the respondent with consent, this is not sufficient for the purpose of Section 125 of the Cr.P.C. and no conclusion can be drawn that applicant No.2 is the daughter of the respondent. The fact that applicant No.1 had refused to conduct the paternity test was also taken into consideration. On the basis of the aforesaid facts, the application for maintenance was rejected.

5. The grounds in this revision are that the impugned order is erroneous and contrary to the facts and circumstances of the case. It should have been held by the Court below, that applicant No.1 and the respondent had solemnized marriage before the photo of God. It should have been also held, that the birth of applicant No.2 was a result of sexual intercourse between applicant No.1 and the respondent. The documents Exs. P/1, P/2,

P/3 and P/4 specifically proved the paternity of applicant No.2. On these grounds, it is prayed that the impugned order be set aside and the maintenance amount be awarded to the applicants.

6. Learned counsel for the applicants submits, that the court below has erred in giving this finding, that the paternity of applicant No.2 is not proved. For the purposes of Section 125 of the Cr.P.C. the evidence brought before the court below was sufficient. It was the finding of the Sessions Court that applicant No.1 and the respondent had physical relationship and had sexual intercourse. Though this finding is based on consent of applicant No.1, it was sufficient evidence. The birth certificate Ex. P/1 and the medical card Ex. P/2C show the name of the respondent as father of applicant No.2. The documents relied upon by the respondent Ex. D/5 and D/6, the school register also display the respondent as father of applicant No.2 which is ample evidence of paternity. The respondent has never submitted any application before the court for examination of paternity of applicant No.2 and merely a suggestion was given in cross-examination of applicant No.1 and her denial for the said test, is not sufficient to draw any adverse inference against the applicants. It is urged that there had been sufficient evidence before the court below which has been ignored while passing the impugned order.

7. Learned counsel for the respondent submits that the applicants have failed to prove subsistence of a legal marriage between applicant No.1 and the respondent. On all occasions, the respondent has denied having physical relationship with applicant No.1 and also denied the paternity of applicant No.2. The documents relied upon by the applicants were prepared

on the basis of the information given by applicant No.1 and the same is not sufficient to prove the paternity of applicant No.2. The offer of the respondent to conduct the paternity test of the child - applicant No.2 was turned down by applicant No.1 in her evidence before the court and there is no proof of legal marriage on record. For these reasons, the finding of the court below in the impugned order cannot be interfered with and it does not suffer from any infirmity.

8. Section 19(4) of the Family Court Act, 1984 lays down that the order passed by the Family Court can be examined on the point of correctness, legality and propriety of such order, which leaves no scope for the court exercising revisional jurisdiction to go into the matter deeply as exercising the jurisdiction of the appellate court. Under this limited jurisdiction, it has to be seen whether the order passed by the court below is perverse or contrary to the principles of law and legal provisions or whether any evidence was shut out for arriving at such a finding in the impugned order and for this purpose, the evidence before the court below is perused.

9. Ram Kumari (PW-1) stated that while working in the house of the respondent she had a love affair with the respondent. On her asking, the respondent married her and a girl child was born. In a village meeting, the respondent denied that he was father of the child and thereafter she lodged a report in the police station. The documents, birth certificate Ex. P/1 and health card Ex. P/2 have been produced before the court. In cross-examination, she admitted that she is Hindu and no rituals were performed according to Hindu rituals and customs for her marriage. Her only statement is that the marriage was performed in front of photo of God, which is not a

custom or practice. Further, it was her admission, that she was not disclosing the name of father of the child and for this reason her father called the village meeting. Thereafter, on a suggestion being given by counsel for the respondent about the determination of paternity, she refused for undergoing any test for determination of paternity of her child.

10. Anjor Singh (AW-2) was present in the village meeting where applicant No.1 made certain allegations and the respondent denied the said allegations. No other witness was examined by the applicants.

11. Respondent - Sohan Kumar (NAW-1) stated in his statement, that he never solemnized marriage with applicant No.1 and never had physical relationship with her. He does not know about the paternity of applicant No.2. He had stated, that in the village meeting applicant No.1 alleged that he is the father of the child and he denied it at the same time. After this meeting, on the report of applicant No.1, he was prosecuted under Section 376 of the IPC and he was acquitted. Later on, he received a notice Ex. D/1 to which he replied vide Ex. D/2 denying that he is the father of the child. He has stated, that he presented one application for blood test of the child for determination of paternity but applicant No.1 did not agree for this test.

12. On going through the record of Case No. 401 of 2006 (Ram Kumari Vs. Sohan Kumar) before the Family Court, Durg, it is revealed that on 17.6.2004, one application was filed by the respondent in which he prayed for DNA test to be conducted for determination of paternity of applicant No.2, which was supported with an affidavit. A reply was submitted by applicant No.1 opposing the DNA test with a prayer that the case be decided on the

basis of the evidence produced. This application was decided by the Family Court, Durg on 5.10.2005 and rejected, stating that parties themselves can get conducted the DNA test and submit a report before the court.

13. The applicants have placed reliance on the order passed by the Coordinate Bench of this court in Criminal Revision No. 340 of 2007 (Ku. Gauri Sahu and Anr. vs. Bhupendra Kumar Sahu) in which, on the basis of evidence it was held that applicant No.1 was illegitimate child of the respondent and maintenance was awarded in her favour. In the present case, on the basis of the evidence on record a finding has to be arrived at, that applicant No.2 is illegitimate child of the respondent. After analyzing the evidence of both the parties, it appears, that it is alleged by Ram Kumari (AW-1) that the child applicant No.2 was born because of her relationship with the respondent. The other witness of the applicant Anjor Singh (AW-2) is simply the witness of village meeting in which he stated that the allegations made by the applicant were denied by the respondent. The documents relied upon by the applicants' side are the birth certificate and the health card. The paternity of the child in the documents was recorded on the basis of the information given by applicant No.1 to the concerned authorities.

14. On the other hand, the respondent has not adduced any evidence denying the statement of the applicants. The only ground taken in his defence is that he appeared in the court and proposed to the applicant to have a DNA test for determining the paternity of the child, which was not allowed by the court and refused by applicant No.1. Hence, the statements of applicant No.1 and the respondent are contrary to each other. Though the

matter under Section 125 of the Cr.P.C. is of quasi civil and quasi criminal nature, the finding of fact is usually given on the basis of preponderance or probability. It is an admitted fact that applicant No.1 has been making a continuous allegation against the respondent, that he had physical relationship with her and there is also a finding of the Sessions court to this effect that there had been physical relationship between applicant No.1 and the respondent based on consent of applicant No.1. The question is whether this alone can be sufficient to record a finding about the paternity of a child. The continuity of the applicants in making allegations and prosecution against the respondent on the basis of their relationship as well as the birth of applicant No.2 gives a weightage in favour of the applicants. The respondent did not further pursue the question of paternity after the rejection of his application for determination of paternity of applicant No.2. Considering all these facts and evidence, it appears that there is a weightage in favour of the applicants. In such a case, the question of paternity is not required to be proved beyond all reasonable doubts. There is preponderance of probability in favour of the applicants.

15. In view of the above discussion, this Court is of the opinion that the court below has erred in holding that the paternity of applicant No.2 was not proved. On the contrary, in accordance with preponderance and probability it is sufficiently found for the purpose of Section 125 of the Cr.P.C. that applicant No.2 is the illegitimate child of the respondent.

16. Regarding the finding of marriage of the respondent and applicant No.1, the only statement of applicant No.1 before the court cannot be regarded as sufficient proof. The marriage before the photo of God is not a

custom in practice in any community or in society. It is specifically required even under the provisions of Section 125 of the Cr.P.C. that a person claiming to be wife has to prove that she is legally married. Hence, the finding of the court below on this point cannot be interfered with.

17. Considering all the facts and circumstances of the case and on the basis of the reasons given aforesaid, this criminal revision is allowed in part. The impugned order of the court below is set aside. The application of applicant No.2 under Section 125 of the Cr.P.C. is allowed. It is ordered that the respondent shall pay a sum of Rs.2,000/- per month as maintenance to applicant No.2 from the date of this order till the date of her attaining majority. The rejection of the application of applicant No.1 by the court below is confirmed.

**Sd/-**

**(Rajendra Chandra Singh Samant)**  
Judge