

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.434 of 2006

Order Reserved on : 29.8.2017

Order Passed on : 8.9.2017

Ku. Temin, daughter of Bhukan alias Bhupendra Kumar Dewangan, aged about 6 months, through Guardian Mother Ishwari Bai, daughter of Kripal Nishad, resident of Village Kauhi, Police Station Ranitarai, Tahsil Patan, District Durg, Chhattisgarh

---- Applicant

versus

Bhukan alias Bhupendra Kumar, son of Mangloo Ram Dewangan, aged about 37 years, resident of Village Kauhi, Police Station Ranitarai, Tahsil Patan, District Durg, Chhattisgarh

--- Respondent

For Applicant : Shri Praveen Dhurandhar, Advocate
For Respondent : Shri Raghvendra Pradhan, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. This revision has been preferred under Section 19(4) of the Family Courts Act against the order dated 3.5.2006 passed in M.J.C. No.52 of 2005 by the 3rd Additional Principal Judge, Family Court, Durg by which the application under Section 125 of the Code of Criminal Procedure submitted by Applicant Ku. Temin has been rejected.
2. Case of Applicant Ku. Temin, aged about 6 months (on the relevant date), in brief, is that she moved an application for maintenance under Section 125 Cr.P.C. through her mother Ishwari Bai before the Family Court, Durg alleging therein that she is the daughter of Respondent Bhukan alias Bhupendra Kumar and, therefore, she may be awarded maintenance as the Respondent is negligent in maintaining her. It was alleged that the Applicant took birth on

15.6.2005 due to cordial relationship between Ishwari Bai (mother of the Applicant) and the Respondent. She also filed an application for interim maintenance along with the main application under Section 125 Cr.P.C.

3. The Respondent appeared before the Family Court. He filed a preliminary objection on 28.4.2006 alleging therein that the Applicant is not his daughter as the mother of the Applicant Ishwari Bai had lodged First Information Report on 20.4.2005 before Police Station Ranitarai for an offence under Section 376 of the Indian Penal Code that on 5.12.2004 the Respondent had committed rape/sexual intercourse with Ishwari Bai. It is further stated in the preliminary objection that the medical report dated 21.4.2005 shows that she was carrying 30 weeks' pregnancy and accordingly the Lower Court finally dismissed the application under Section 125 Cr.P.C. vide the impugned order dated 3.5.2006.
4. It was argued by Learned Counsel appearing for the Applicant that the impugned order dated 3.5.2006 is patently illegal, irregular and improper. The case was not fixed for arguments on the application under Section 125 Cr.P.C. No statement was taken on the application under Section 125 Cr.P.C. Had the evidence been permitted to lead, paternity of the Applicant would have been established. Only the application for interim maintenance could have been dismissed in view of the medical report, but the main application under Section 125 Cr.P.C. for maintenance could not have been dismissed and the same ought to have been fixed for reply and evidence. Learned Counsel further argued that the certified copy of the medical report relating to the case under Section 376 IPC has no legal entity in this case and hence the

same is not admissible in this case unless it is proved legally. The procedure adopted in this case is patently irregular and illegal.

5. Learned Counsel appearing for the Respondent submitted that it was the only plea taken by the Applicant herself that the so called rape/sexual intercourse with her mother Ishwari Bai had taken place on 5.12.2004. On 21.4.2005, Ishwari Bai was medically examined. It was found that she was carrying 7 months of advanced pregnancy. The birth of the Applicant took place on 15.6.2005, i.e., within 6 months from the date of 5.12.2004. Therefore, in any case, the Applicant is not the daughter of the Respondent. Thus, the finding of the Family Court is proper.
6. I have heard Learned Counsel appearing for the parties and examined the impugned order as also the record of the Family Court minutely.
7. A bare perusal of the order-sheets of the Family Court reveals that the application under Section 125 Cr.P.C. was submitted on 7.12.2005 along with the application for interim maintenance. As per the pleadings of the Applicant, she was born on 15.6.2005. On 28.4.2006, a preliminary objection was submitted by the Respondent, which was decided on 3.5.2006 and the application submitted under Section 125 Cr.P.C. by the Applicant was dismissed on the ground that she is not the daughter of the Respondent. Thus, it is clear that the application under Section 125 Cr.P.C. is not decided on its own merits and no opportunity for leading evidence has also been afforded to the Applicant.
8. It was argued by Learned Counsel appearing for the Respondent that even if the Applicant had been afforded opportunity to lead

evidence, she would not have been able to prove that she is the daughter of the Respondent because the mother of the Applicant Ishwari Bai had lodged FIR on 20.4.2005 alleging that on 5.12.2004 she was raped/sexually intercoursed by the Respondent and as per her own pleading the Applicant was born on 15.6.2005. Therefore, she was born within 6 months from 5.12.2004. Thus, it is not possible that the Applicant is the child of the Respondent.

9. On the contrary, it was argued on behalf of the Applicant that the Family Court did not afford any opportunity to the Applicant to lead evidence.
10. Even if it is accepted for the sake of argument that the Applicant took birth within 6 months from the date of incident/rape, i.e., 5.12.2004, only on this ground, it cannot be said that the Applicant is not the daughter of the Respondent. In this case, no opportunity of leading evidence has been afforded to the parties. In absence of any evidence on record regarding paternity of the Applicant, the finding arrived at by the Family Court cannot be said to be proper and sustainable in the eyes of law.
11. Law does not stimulate arriving at a finding without affording of opportunity to lead evidence. In the instant case, it has been urged that there was a cordial relationship between the Respondent and the mother of the Applicant, but, later on, an FIR was lodged by the mother of the Applicant alleging that she was raped by the Respondent. The possibility of sexual intercourse between the Respondent and the mother of the Applicant during their cordial relationship, i.e., before lodging of the FIR and as a consequence of such intercourse conceiving of the mother of the Applicant

cannot be ruled out. Therefore, had the Applicant been afforded opportunity to lead evidence, she would have been able to prove her paternity by leading evidence of report of her DNA Test, etc. Even the Court below itself, before arriving at the finding in question, could have ordered for DNA Test of the Applicant and thereafter appreciated the evidence made available to it in this regard.

12. In view of the foregoing, the impugned order dated 3.5.2006 passed by the Family Court is set aside. The matter is remanded back to the Family Court to afford sufficient opportunity to the parties to lead their evidence. The Family Court, after leading of the evidence, shall hear the parties and thereafter arrive at a fresh finding and pass an appropriate order in accordance with law. The parties shall appear in person before the Family Court on **25.10.2017**.
13. The criminal revision is allowed to the extent indicated above.
14. Record of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(**Arvind Singh Chandel**)
Judge