

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 634 of 2011**

1. Sukh Bai, aged about 45 years, w/o Puran Lal.
2. Kumari Durga (wrongly mentioned in order sheet as Darga), aged about 13 years D/o. Puran Lal.
3. Harishankar, aged about 5 years, S/o Puran Lal.

Applicants No. 2 & 3 Are Minor through Puran Lal through guardian
Mother Sukh Bai W/o Puran Lal Kenwat

All are R/o Sheorinarayan, Tahsil Nawagarh, P.S. Sheorinarayan,
Distt.-Janjgir-Champa, Chhattisgarh.

---- Applicants**Versus**

Puran Lal aged about 52 years, S/o Rath, caste Kenwat, R/o
Sheorinarayan, Ward No. 3, Tahsil Nawagarh, police station
Sheorinarayan, District Janjgir-Champa, Chhattisgarh.

---- Non-applicant

For the applicants : Ms. Nirupama Bajpai, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order on Board****28.02.2017**

1. This revision is directed against the order dated 18.10.2011, passed in Misc. Criminal Case No. 69 of 2010 by the Learned Presiding Officer, Family Court, District Janjgir-Champa, Chhattisgarh, dismissing the application under Section 125 of the Code of Criminal Procedure filed by the applicants.

2. The applicants filed an application under Section 125 of the Cr.P.C. before the Court below, stating that about 15 years prior to filing of the application, respondent married applicant No.1 – Sukh Bai by performing Chudi Marriage which is prevalent custom in the caste of both the parties. Out of their wedlock, applicants No.2 and 3 – Kumari Durga and Harishankar were born. The applicants are living separately since 2007 and the respondent is not taking care of their maintenance. Applicant No.1 is suffering from leprosy and she is unable to do the labour work. The applicants have no other source of income whereas the respondent has sufficient means to maintain the applicants. On these grounds, it was prayed that the respondent be directed to pay Rs.2,000/- per month to each of the applicants.

3. The respondent has filed a reply/objection stating that applicant No.1 is not his wife and she is the wife of one Ramji s/o Puniram, resident of Bhatgaon. He denied the paternity of applicants No.2 and 3 and stated that the applicants have no relationship with him. The respondent further stated that the application has been brought on false grounds and prayed for dismissal of the same.

4. The Court below after considering the averments made by both the parties, the evidence on record and the arguments submitted passed the impugned order dismissing the application holding that it was not proved by the applicants that applicant No.1 was wife and applicants No.2 and 3 were children of the respondent.

5. The grounds in this revision are that, the order of the Learned Family Court is not based on the correct facts and law. The applicants have successfully established their relationship with the respondent and as such they are entitled for maintenance. It is prayed that the impugned order be set aside and a suitable order be passed.

6. It is submitted by counsel for the applicants that the statements of Sukh Bai (AW-1), Premlal (AW-2) and Suresh Kumar (AW-3) clearly establish the relationship of the respondent with the applicants which have been ignored and not appreciated by the Court below and therefore, prayed that the present revision may be allowed and an order may be passed in favour of the applicants.

7. There is no representation on behalf of the respondent when the case was called out for final hearing today.

8. The question for consideration in this case is whether the applicants have established their case by adducing evidence that applicant No.1 is wife and applicants No.2 and 3 are the siblings of the respondent.

9. Sukh Bai (AW-1) stated that at about 15 years ago she got acquainted with the respondent and also had physical relation with him. Out of which, applicants No.2 and 3 were born. After that, the respondent refused to maintain them. She stated that she is suffering from leprosy and is unable to

earn her livelihood whereas, the respondent earns by labour work and also owns a house and three acres of agricultural land. In cross-examination, she admitted that earlier she was married to one Ramji, resident of Bhatgaon and 20 years back they were separated. Further, she admitted that no formal marriage was solemnized between her and the respondent in accordance with the social customs and rituals. She never wants to live in the house of the respondent. On the suggestion made by the defence, she denied that she had relationship with one person, namely Pradeep and applicants No.2 and 3 were siblings of Pradeep. In the school records, name of the respondent has been shown as father of applicants No.2 and 3. She denied other suggestions made by the respondent.

10. Premlal (AW-2) has stated that the respondent had physical relationship with applicant No.1. Out of which, applicants No.2 and 3 were born. This is known to all. His statement has remained unrebutted in cross-examination. Suresh Kumar (AW-3) stated that the respondent kept applicant No.1 as his wife according to Chudi Custom and kept in his residence. No evidence was led by the respondent/ non-applicant.

11 The evidence brought by applicant No.1 has remained unrebutted to this extent that applicant No.1 and the respondent had physical relationship with each other. Applicants No.2 and 3 were born out of this physical relationship and it is known to all in the locality. As per the statement of Premlal (AW-2), the evidence on the point of marriage between applicant No.1 and the respondent was not proved. Sukh Bai (AW-1) herself has not stated that marriage was performed with the respondent by following the

Chudi custom. The only statement on his point is made by Suresh Kumar (AW-3) who does not seem to be a witness of this marriage. Hence, the finding arrived at by court below that the marriage between applicant No.1 and the respondent was not proved, is a correct finding which needs no interference. But the finding with regard to the relationship with applicants No.2 and 3 with the respondent is not a proper finding. Statement of Sukh Bai (AW-1) on this point has remained unrebutted. She denied the suggestion given in defence that applicants No.2 and 3 are not siblings of the respondent. No such suggestion was given to Prem Lal (AW-2) in his cross-examination. Thus, this evidence had been sufficient to give a finding on the basis of preponderance of probabilities that applicants No.2 and 3 are siblings of the respondent. The court below has committed an error by giving a contrary finding in this respect.

12. With regard to other aspects for allowing the maintenance in favour of applicants No.2 and 3, it had not been the case of the respondent that applicants No.2 and 3 have sufficient means for their maintenance and as per statement of denial of the respondent it is clear that he is clearly refusing to maintain them. In view of the above discussion, it appears to be clear that applicants No.2 and 3 being the siblings of the respondent are entitled to claim maintenance from him. The respondent being an able bodied person cannot refuse to maintain his own children. On the basis of the reasons aforementioned and the finding arrived at in this revision, it is held that applicant No.1 not being a legally married wife of the respondent is not entitled for any maintenance. Hence, the revision, so far as it relates to applicant No.1 is concerned, is dismissed. However, the revision, so far as

it relates to applicants No.2 and 3, is allowed and that part of the impugned order rejecting the application for grant of maintenance to applicants No.2 and 3 is set aside. It is ordered that the respondent shall pay Rs.1,000/- each to applicants No.2 and 3 for their maintenance from the date of order passed by the Family Court till their attaining the age of majority.

13. With the aforesaid observations, the revision petition is disposed of.

Sd/-

(Rajendra Chandra Singh Samant)
Judge