

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 215 of 2017**

- Resham Lal Bharti S/o Itwari Ram Bharti Aged About 40 Years Occupation- Government Job, Caste Satnami, R/o Village Singhanpur, Thana Patewa, District Mahasamund, Chhattisgarh. Job Place Taxation Officer Assistante Yantrik Lekha Parikshan Vibhag Janpad Panchayat Pithora District Mahasamund, Chhattisgarh.

---- Applicant**Versus**

1. Smt. Aarti W/o Resham Lal Bharti Aged About 32 Years Caste Satnami, Occupation House Wife, R/o Village Nandori , Post Janjgiri, Near Charoda, District Durg, Chhattisgarh.
2. Kumari Harshita Aged About 1 Years Minor Through Her Mother Smt. Aarti , Caste Satnami, Occupation House Wife, R/p Village Nandori , Post Janjgiri, Near Charoda, District Durg, Chhattisgarh.

---- Non-Applicants

For Applicant : Shri Arvind Dubey, Advocate

SB: Hon'ble Shri Justice P.Sam Koshy
Order On Board

23/02/2017

1. The present Revision Petition has been preferred under Section 19(4) of the Family Court Act assailing the order dated 04.02.2017 passed by the Principal Judge Family Court, Durg in Criminal M.J.C. No. 805/2015.
2. By way of the said impugned order the Court below in the proceedings under Section 125 Cr.P.C. has allowed the same and has ordered for payment of maintenance of Rs.4,000/- per month to Non-Applicant No.1–wife and Rs.3,000/- per month to Non-Applicant No.2–daughter total Rs. 7,000/- per month.
3. Assailing the said order, learned Counsel for the Applicant submits that the impugned order is bad in law on two grounds. Firstly that grant of maintenance to Non-applicant No.1- wife is bad to the extent that there was

no husband and wife relationship between Non-applicant No.1 and the Applicant and also contended that the Applicant as well as Non-Applicant No.1 had separated very early, therefore, it cannot be presumed that the Applicant and Non-Applicant No.1 lived as husband wife for a considerable period which would entitle Non-Applicant No.1 grant of maintenance. It is also the submission of the Applicant that the maintenance awarded by the Court below is on the higher side looking to the earning capacity of the Applicant and also taking into consideration the fact that he has 4 children from his earlier marriage and he has also to look after his old aged mother therefore, the liability saddled by the Court below on the Applicant is too harsh. Hence, the Applicant prays for reducing the amount of maintenance awarded by the Court below suitable.

4. Having considered the petition filed by the Applicant it would be pertinent to go through the reply which has been filed by the Applicant before the Court below opposing the claim petition filed by the Non-Applicants. It was admitted by the Applicant himself that he was having live-in-relation with the Non-Applicant No.1 and it was also admitted that as a result of co-habitation, Non-Applicant No.1 became pregnant and later gave birth to a child from the present Applicant. These two admissions on part of the Applicant are sufficient to draw strong inference for accepting the fact that there has been co-habitation between the parties and that too as husband and wife more particularly when a child is born from the said relationship. The ground urged for denial of maintenance to the Non-Applicant No.1 for a brief stay with the Applicant, is noticed to be rejected.
5. The Supreme Court in case of **Chanmuniya Vs. Virendra Kumar Singh Kushwaha & Another**¹ 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

¹ (2011) 1 SCC 141

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.”

6. Again the Supreme Court in paragraph-27 referring to decision passed in *Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit*³ it has been held that the standard of proof of marriage in a Section 125 proceeding is not as strict as is required in a trial for an offence under Section 494 IPC. It was further held

² (1991) 2 SCC 375

³ (1999) 7 SCC 675

that maintenance cannot be denied where there was some evidence on which conclusions of living together could be reached.

7. 14. Lastly, in paragraph 42 of the said judgment, the Supreme Court has held that broad and expansive interpretation should be given to the term 'wife' to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a pre-condition for maintenance under Section 125 of the Cr.P.C.
8. Likewise, the Supreme Court again in case of *Badshah Vs. Urmila Badshah Godse & Another*⁴ 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

4 (2014) 1 SCC 188

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.”[5]

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.”

9. In paragraph 18 of same judgment, the Supreme Court has further held that, we are of the opinion that there is a non-rebuttable presumption that the legislature while making a provision like Section 125 CrPC, to fulfil its constitutional duty in good faith, had always intended to give relief to the woman becoming “wife” under such circumstances. In paragraph-20 it was further held, If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125 CrPC, such a woman is to be treated as the legally wedded wife.
10. In the aforesaid judgments, it was held that in case there is co-habitation between two parties for suitable period and the nature of co-habitation was as if they were husband and wife and even if the said relationship discontinued after sometime, the husband cannot deny maintenance to the wife. The child born out of such relationship is sufficient to draw adverse inference against the husband that there existed a relationship between the parties.
11. So far as the quantum of maintenance which is awarded by the Court below is concerned, if we look into the financial condition of the Applicant. He works as an Assistant Tax Officer at Janpad Panchayat, Pithaura. There is also an admission on the part of the Applicant himself that he is drawing a salary of Rs.33,000/- per month and if that is the financial status of the Applicant, then

in such circumstances, it cannot be held that the amount of maintenance awarded by the Court below is on higher side. The further aspect which is to be considered is also the fact that in today's age, the cost of living a decent standard of living viz. Payment of rent for residential purpose, educational expenses, and other day-to-day expenses has gone very high. It is well settled by the Supreme Court that the maintenance should be granted keeping in view the financial status of the husband. In the instant case, the husband is undoubtedly having a respectable position in the society hence the order passed by the Court below is just and proper.

12. In view of the above, no strong case is made out calling for interference with the order impugned. Thus, the petition being devoid of merits deserves to be and is accordingly rejected.
13. No order as to costs.

Sd/-
(P. Sam Koshy)
JUDGE