

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 585 of 2017**

1. Bhagmania Bai W/o Windrawan Aged About 30 Years R/o Village Pasal, Police Station Chandani, Tahsil Odagi, District Surajpur, Chhattisgarh.
2. Seeta Kunwar D/o Windrawan Aged About 11 Years Minor Represented By Her Natural Guardian Mother (Applicant No. 1) R/o Village Pasal, Police Station Chandani, Tahsil Odagi, District Surajpur, Chhattisgarh.

---- Petitioners**Versus**

Windrawan S/o Jaipat, Aged About 34 Years R/o Village Pasal, Police Station Chandani, Tahsil Odagi, District Surajpur, Chhattisgarh.

---- Respondent

For the Petitioners : Smt. Meena Shastri, Advocate.
None for the respondent : Though served.

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

08.09.2017

Heard.

1. This petition has been brought under Section 482 of Cr.P.C with a prayer to set aside the order dated 11.01.2016 passed by the JMFC, Surajpur in MCRC.No.195/2015, dated 11.01.2016 and the order 08.02.2017 passed by the Revisional Court, Surajpur, in Criminal Revision No. 9/2016 dated 08.02.2017.
2. It is submitted by learned counsel for the petitioner that an application under Section 125 of Cr.P.C. was moved before the JMFC, Surajpur

by the petitioner claiming monthly maintenance from the respondent stating that petitioner No.1 is wife and petitioner No.2 is daughter of the respondent. The application has been rejected vide order dated 11.01.2016 against which Criminal Revision No.9/2016 was filed before the Second Additional Sessions Judge, Surajpur, which was also dismissed by impugned order dated 08.02.2017.

3. It is submitted by learned counsel for the petitioner that petition under Section 125 of Cr.P.C filed before the Court of JMFC on 25.04.2005, which has been decided after a lapse of 11 years on 11.01.2016. It is submitted that consequent to the enactment of the Family Court Act, the Court of JMFC, Surajpur did not have jurisdiction to decide the application under Section 125 of Cr.P.C. Section 7 (f) of the Act, 1984 specifically provides that Family Court shall have power to exercise jurisdiction of a suit or proceedings for maintenance, according to which the proceedings for maintenance include proceedings under Section 125 of Cr.P.C, sub-section (2) of Section 7 of Family Courts Act also makes it clear that the jurisdiction exercisable by the Judicial Magistrate of First Class under Chapter 9 of Cr.P.C relating to order for maintenance of wife, children and parents shall also be within domain of Family Court.
4. As the petition under Section 125 of Cr.P.C has not been decided by the Family Court, the mandate under Section 9 of the Act, to make efforts for settlement were not made and the petition/applicant could not get the benefit of the same.
5. It is also submitted that petitioner has a right to produce additional documents in case if it is required. It is also contended that in the proceedings before the Court of JMFC, Surajpur, petitioner has proved

her case of being entitled to maintenance. Hence, prayer that petition be allowed, impugned order, and the order of the Court of JMFC, Surajpur be set aside.

6. Respondent is not represented in this petition.
7. Perused the records of the courts below.
8. Dealing with the first ground raised in the petition regarding the jurisdiction of the Court of JMFC, Surajpur and the Second Additional Sessions Judge, Surajpur in deciding the matter, Section 8 of the Family Court 1984, provides that where the Family Court has been established for any area, District Court, Sub-ordinate Court and Court of Magistrate etc referred to Sub-section (1) of Section 7, shall have no jurisdiction to try the cases or conduct the proceedings of the nature referred to in that sub-section. Section 3 of the Act, 1984 provides that State Government after consultation with the High Court shall establish the Family Court for a specific area and specify by notification the local limits of the area in which the Family Court shall have jurisdiction.
9. On a bare reading of above provisions, it is clear that there is a distinction to be made, the places where the Family Court has been established, in such places the Family Court shall have jurisdiction under Section 7 of the Act, 1984, whereas in such places, where the Family Court is not established by the State Government, the parties shall be entitled to take recourse to regular Criminal Courts praying for maintenance under Section 125 of Cr.P.C, as Section 8 of the Act, 1984 makes it specifically clear that the exclusion of jurisdiction of District Courts and the Court of Magistrate shall be effective only in the area where the Family Court are established. It is clear that no

Family Court has been established by the State for District-Surajpur and in such situation the Court of Magistrate as well as the Sessions Judge shall have the jurisdiction to deal with the application under Section 125 of Cr.P.C and the revision arising out of the order passed on this application. Hence, the ground raised in this regard is without any substance.

10. Considering the remaining grounds raised it has been held by the Court of JMFC, Surajpur that the petitioner has failed to prove her marriage with the respondent and secondly, she has failed to prove that petitioner No.2 is daughter of the respondent and accordingly rejected the application of the petitioner vide order dated 08.02.2017 and the same has been confirmed by the Revisional Court as well.
11. Petitioner No.1 has stated that respondent had performed marriage with her by exchange of garland in temple. No statement was made by her about performance of any rituals or ceremony held which gives recognition to a marriage. Fulmati (AW-2) has stated that she was present when the marriage of petitioner No.1 and respondent was performed in the temple. Apart from this, no other evidence was brought on record by the petitioner/applicant.
12. Respondent Windrawan (NAW-3) examined himself and stated that he has no relation with the petitioner/applicant. He has stated that petitioner No.1 was married to a man named Mangra Khairwar, however, she left him and performed marriage with another person named Shiv Kumar, she also left him after sometime. Marriage of petitioner was never performed by him and he has specifically denied performance of marriage by exchange of garland in the temple. Jaipath (NAW-4) and Ramsay (NAW-5) have also stated in similar

terms and whereby supported the respondent/non-applicant.

13. For the purpose of Section 125 of Cr.P.C, wife means a legally married wife. It has been further given interpretation that if a woman continuously resides with a man and both are recognized as husband and wife, in that case also such woman shall have recognition of wife and shall be entitled for maintenance. In other cases, customary marriage also have recognition such as chudi marriage, which is a custom prevailing in the State of Chhattisgarh. Marriage of the petitioner No.1 does not fall within any of these categories. Although it is the statement of Bhagmania Bai (AW-1) and Fulmati (AW-2) that petitioner No.1 resided with respondent for about two years but that has been categorically denied by respondent/non-applicant in his evidence and also by the witnesses produced by him. Documents of (EX- A 1) filed by the applicant is the report of PS-Chandani, Distt-Surajpur, which is again based on statement of petitioner No.1 that petitioner No.1 and respondent lived as husband and wife for two years which is subjected to proof.
14. Respondent/non applicant has also placed reliance on the certificate (EX-NA-3) issuance of which has been duly proved by Munni Devi (NAW-2) and this certificate demonstrates that petitioner No.1 is the wife of one Mohar Lal.
15. After scrutinizing the evidence on the point of marriage between petitioner No.1 and respondent, although no strict proof is required in such cases, because such cases are decided on the basis of preponderance of probabilities. In this case, petitioner No.1 has failed to prove her case on the basis of preponderance of probabilities. It can be said that respondent had some relationship with her for a

period of time but this does not give her recognition as a wife of respondent. Thus the findings arrived at by the Court of JMFC, Surajpur and affirmed by the Revisional Court do not call for any interference by this Court.

16. The claim of petitioner No.2 that she is daughter of respondent has been denied by courts below, on the basis of the evidence on record.
17. Bhagmania Bai (AW-1) petitioner No.1 has stated that petitioner No.2 was born out of the relationship between the petitioner No.1 and the respondent. In cross-examination she has denied that during the pregnancy she with the help of Aganbadi helper got recorded the name of Mohar Lal as husband of the petitioner No.1, her statement is supported by Fulmati (AW-2).
18. Munni Devi (NAW-2) has stated in support of respondent that she is working as Aganbadi helper. In the month of Jan,2005 petitioner No.1 for the purpose of getting nutritious food, as per the scheme, came to her and requested to record her name. She has further stated that petitioner No.1 told her name as Bhagmania wife of Mohar Lal, which she recorded in the register Ex.(NA-4) and Ex.(NA-3). She also proved the certificate (Ex.NA-3) issued by her. Her statement remained unshaken in the cross-examination.
19. After the statement of Munni Devi (NAW-2) burden has shifted back towards the applicant to rebut, falsify or explain the entry in the official register of the Aganbadi and without there being such rebuttal or explanation, the statement of the petitioner/applicant could not have been regarded as proved. Hence, the findings arrived at by the courts below do not suffer from any infirmity.

20. In the result and on the basis of reasons aforementioned, this petition appears to be devoid of merits and it is accordingly dismissed.

Sd /-

(Rajendra Chandra Singh Samant)

Judge

Jamal