

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 655 of 2015**

- Basant Kumar S/o Bhruwa Das, Aged about 37 Years, R/o Village Kapisda, Police Station Birra, Tah. Navagarh, Distt. Janjgir-Champa (Chhattisgarh).

---- Applicant**Versus**

- Smt. Suman Mahant W/o Samaru Lal, (In application U/s 125 of Cr.P.C. mentioned W/o Basant Kumar) Aged about 32 Years, R/o Village Kapisda, Police Station Birra, Tah. Navagarh, District Janjgir - Champa (Chhattisgarh), Present Address : Village Deveri, Police Station & Tah. Navagarh, Distt. Janjgir-Champa (Chhattisgarh)

---- Non-applicant

For Applicant	:-	Shri Ravindra Sharma, Advocate.
For Non-applicant	:-	Shri F.S. Khare, Advocate

SB: Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order on Board****01-03-2017**

Order dated 15-07-2015 passed by Judge, Family Court, Janjgir-Champa in Misc. Criminal Case No.70/2012 is challenged in this petition.

2. Non-applicant filed an application under Section 125 of Code of Criminal Procedure (for short "Cr.P.C.") stating that her marriage was solemnized in accordance with social ritual in September, 2010. Thereafter, she started residing in her matrimonial house. She got pregnant but her pregnancy was got aborted by the applicant and since then the applicant started beating and torturing her. A complaint was submitted before the Superintendent of Police, Janjgir on 19-09-2011 and another complaint was submitted on 14-03-2012. The non-applicant has stated that she is unable to earn and maintain herself and she has no other source of income whereas the applicant is a man of means and

capable of giving maintenance, on these grounds, she prayed for order of maintenance.

3. The applicant in reply denying that non-applicant is his wife. He stated that non-applicant is the wife of Samarulal and had a son namely, Naresh Kumar. He denied the marriage with non-applicant and stated that he was married to Meena, daughter of late Bundarudas Mahant, resident of Bankimongra and that marriage was performed in accordance social rituals. Denying all the other contentions made in the application, he prayed for dismissal of the application for maintenance.

4. The Court below afforded opportunity to both the parties for adducing evidence and submitting arguments. The impugned order was passed in which it was held that non-applicant is the wife of the applicant who is unable to maintain herself and the applicant was competent to pay maintenance. On these grounds, the application was allowed and the applicant was ordered to pay maintenance of Rs.1300/- per month to the non-applicant.

5. The grounds in this revision are that the order passed by the Court below is illegal and contrary to the facts of the case. Non-applicant being married wife of Samarulal was not entitled for maintenance from the applicant. Further there is proof that the applicant has a subsisting marriage and legally married wife, hence, non-applicant could not have got the status of the legal wife of the applicant. On these grounds, it is prayed that the impugned order be set aside.

6. It is submitted by learned counsel for the applicant, that the non-applicant has admitted that the applicant was already married. Her statement that the applicant suppressed the fact of previous marriage, is not believable. This does

not legalise the so-called marriage between the applicant and the non-applicant. Further it was proved in evidence that non-applicant was also married to one Samarulal. There is no pleading that non-applicant had no knowledge of earlier marriage of the applicant. Further, it was submitted that there is no evidence regarding valid marriage between the applicant and the non-applicant. The affidavit (Ex. P-1) is not legally admissible evidence. On these grounds, it is prayed that non-applicant is not entitled for any maintenance from the applicant.

7. It is submitted by learned counsel for the non-applicant that the applicant by wilfully suppressing the fact that he is already married and again married with the non-applicant. On this point there is clear view given by the Supreme Court in the matter of **Badshah Vs. Sou. Urmila Badshah Godse and another;** reported in **2014 Cri. L.J. 1076** in which it was held that marriage after suppression of a fact that the husband was already married does not affect the entitlement of wife under second marriage, especially, when the wife from second marriage had no knowledge about the earlier marriage of her husband. Hence, on these grounds, this revision petition deserves to be dismissed.

8. Considering the grounds in this revision and the submissions made by both the parties, the question arises for determination are that:

(1) Whether the marriage of the applicant and the non-applicant was proved before the Court below?

(2) If yes, whether the marriage between the applicant and the non-applicant gives entitlement to the non-applicant as legally wedded wife?

9. It is not disputed that the applicant was already married to one Meena and had one child from her. Suman (Aw-1) stated that she got married to applicant,

who made a false statement that he has no wife. She has produced Ex. P-1 and affidavit purportedly given by the applicant stating that non-applicant is his married wife.

10. In cross-examination she denied the suggestion that she is the wife of Samarulal and Naresh Kumar is her son. She denied about the knowledge of earlier marriage of the applicant. The document Ex. D-1 which is a School certificate showing Naresh Kumar is son of Samarulal and Suman Bai. Regarding marriage she has stated that her marriage with applicant took place in Madwarani Temple which was not performed in accordance with Saptapadi ritual.

11. Samarulal (AW-2) has stated that he has not witnessed the marriage of the applicant and the non-applicant. No question was put to him regarding earlier marriage of non-applicant. As per the grounds for contest by the applicant, Samarulal Vaishnav (AW-2) was the husband of the non-applicant. There is no admission or statement by this witness that his marriage was performed with non-applicant.

12. Ghasidas Vaishnav (AW-3) has stated that Samarulal had a wife namely, Suman but she has died. His statement has not been rebutted in his cross-examination. Hence, the wife of Samarulal was the non-applicant herself is not established on the basis of statement of this witness.

13. Basant Kumar Mahant (NAW-1) has stated about his earlier marriage which is not disputed. Further he has stated that he never cohabited with Suman Bai. In cross-examination, he has denied about cohabiting with non-applicant for 7 to 8 months and he also denied executing the affidavit (Ex. P-1).

14. Totaram Chandra (NAW-2) and Chhotelal (NAW-3) have stated that the applicant has no relationship with non-applicant.

15. On perusing and analysing the evidence from both the sides, it is found that the allegation made by the applicant against non-applicant that she had been married wife of Samarulal is not proved. The production of document from School by itself is not sufficient to hold that non-applicant was the wife of Samaru and mother of Naresh Kumar, especially when the scribe of the document has not been examined by the applicant side and there is clear denial of non-applicant herself supported by the statement of Samarudas (AW-2). The statement of non-applicant that marriage was performed with the applicant has to be taken into consideration with special emphasis. Suman (AW-1) has stated that the marriage was performed in temple and not in accordance with any social ritual and she resided with the applicant for about 8 to 9 months only. Other witness from applicant's side have not stated anything about the marriage between the applicant and the non-applicant. Further, there is denial from applicant's side that any marriage was performed with the non-applicant. On the basis of such evidence, it is found that there is no evidence regarding performance of marriage between the applicant and the non-applicant.

16. The documentary evidence (Ex. P-1) produced from non-applicant's side is also not proved in legal manner and the only statement in support of this document is by Suman (AW-1), who has stated that Ex. P-1 was signed by the applicant, which has been categorically denied by Basant Kumar (NAW-1) in his statement. When a statement is made and is denied, the affect of the statement gets nullified, the burden then shifted again towards non-applicant to prove the

execution of document by the applicant by production of cogent evidence and relevant witness which has not been done. Thus, Ex. P-1 has no significance.

17. Another statement of Suman (AW-1) that the applicant made false statement before her that he is not married to anybody, is though an un-rebutted statement in her cross-examination could not have been taken into account, as the marriage between the applicant and the non-applicant has not been proved. The if statement of Suman (AW-1) is left with no significance.

18. On the basis of discussion made above, it is found that the applicant and the non-applicant resided together for 8-9 months but this is not sufficient proof of marriage. Non-applicant herself could not make any clear statement regarding performance of marriage and none of the witnesses produced from her side have given any statement to this effect, hence, there is absolutely no proof regarding solemnisation of marriage between the applicant and the non-applicant. Under these circumstances, the ratio of law laid down in the judgement of **Badshah** (supra) had no application in this case. The finding of the Court below had been erroneous and the impugned order passed is liable to be set aside. Hence, the instant revision is allowed. The order passed by the Court below is hereby set aside.

Sd/-
(**Rajendra Chandra Singh Samant**)
Judge