

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1018 of 2014**

- Apeksha Shukla S/o Shiv Kumar Singh Aged About 25 Years Presently R/o At Opposite High School, Balodabazar, Ps And Tah. Balodabazar, Distt. Balodabazar - Bhatapara, Civil And Rev. Distt. Balodabazar - Bhatapara C.G.

---- Petitioner**Versus**

- Arvind Shukla S/o Shri Manmohan Shukla Aged About 30 Years R/o Parsabhader Road, Civil Lines, Balodabazar, Ps And Tah. Baloda Bazar, Distt. Baloda Bazar - Bhatapara C.G.

---- Respondent**&****CRMP No. 1019 Of 2014**

1. Apeksha Shukla And Anr. S/o. Shiv Kumar Singh Aged About 25 Years R/o. Opposite High School, Balodabazar, P.S. & Tah. Balodabazar, Distt. Balodabazar (C.G.)
2. Kumari Aabya D/o. Arvind Shukla Aged About 6 Years R/o. Opposite High School, Balodabazar, P.S. & Tah. Balodabazar, Distt. Balodabazar (C.G.)

---- Petitioners**Vs**

- Arvind Shukla Manmohan Shukla Aged About 30 Years R/o. Parsabhader Road, Civil Lines, Balodabazar, P.S. & Tah. Balodabazar (C.G.)

---- Respondent

For Petitioners	:	Shri Goutam Khetrapal, Advocate.
For Respondent	:	None appears even when the case is called out for hearing in the third found.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

08/09/2017

Heard.

1. Since both these petitions have arisen out of a common case, the same are taken up together for disposal.
2. CrMP No.1018 of 2014 has been brought challenging the finding of the Chief Judicial Magistrate Court, claiming that petitioner is entitled for maintenance. CrMP No.1019 of 2014 has been brought challenging the order of the revisional Court in which the findings have been given that petitioner No.1 is not legally wedded wife of the respondent.
3. The petitioners of CrMP No.1018/14 and petitioner No.1 of CrMP No.1019 have filed an application under Section 125 of Cr.P.C. before the Court of Chief Judicial Magistrate, Balodabazar against the respondent in which petitioner No.2 of CrMP No.1019 of 2014 was also applicant. It was stated in the application that respondent performed marriage with petitioner Apeksha Shukla in the year 2006, and out of their wedlock, petitioner No.2 of CrMP No.1019/14 was born. Due to misunderstanding and disputes between them, respondent has driven out the petitioners from his residence in September, 2009 and thus the petitioners were compelled to take shelter at the parental house of Petitioner No.1. Thereafter, FIR was lodged in PS-Balodabazar against respondent based on which offence under Section 498-A/34 of Indian Penal Code (for short 'IPC') was registered. They prayed for maintenance on the basis of the entitlement. The Court of CJM after affording opportunity of adducing evidence, oral and documentary, to both the parties, passed order dated 13.8.2013, in which, it was held that

petitioner Apeksha Sukla is the legally wedded wife of respondent and petitioner Ku. Aabya is the daughter of respondent. It was further held that petitioner Apeksha Sukla was competent to maintain herself, hence, she is not entitled for maintenance, whereas monthly maintenance of Rs.2,000/- was ordered in favour of petitioner Ku. Aabya by partly allowing the application.

4. This order was challenged before the Sessions Court in Revision Petition No.35/2013 which was decided on 25.8.2014 by 3rd Additional Sessions Judge, Balodabazar, upholding the order of the Court of CJM, Balodabazar, and dismissing the revision petition. Being aggrieved therewith, the respondent preferred a Criminal Revision No.37/2013 challenging the findings of valid marriage which was decided by order dated 25.8.2014 allowing the revision and holding that petitioner Apeksha Sukla is not the legally wedded wife of the respondent.
5. It is submitted by the counsel for petitioners in both the cases that the order passed by the CJM Court denying maintenance to petitioner Apeksha Sukla is perverse, arbitrary and illegal. Similarly, findings of the revisional Court holding that petitioner Apeksha Sukla is not a legally wedded wife of respondent, is also erroneous which needs interference. It is submitted that petitioner has proved her case by bringing cogent and reliable evidence regarding her entitlement for maintenance and regarding her status of being a legally wedded wife of respondent, which has been ignored by the Courts below. Hence, relief as claimed in the petitions is prayed for.
6. Respondent is not represented in both the cases, though notice is served on him.

7. Heard the appearing counsel and perused the documents available on record.
8. The findings given by the Courts below are based on the evidence before it and therefore the evidence brought on record by both the parties in the Court of CJM, Balodabazar are perused.
9. Petitioner Apeksha Sukla AW-1 has stated that in the year 2006 she eloped with respondent and married her. She stayed in the house of respondent for about two years and thereafter the respondent started treating her with cruelty, because of which she left the house of respondent and came to her father's house along with her daughter. Her expenses are borne by her father. In cross-examination, she has stated that her marriage was solemnized with Pooja of God Satyanarayan, garlanding and also by performance of other rituals but she admits that the ritual of *Kanyadan* did not take place. Further, she has admitted that she is getting monthly salary of Rs.2,000/- being employed in a play school. No other witness was examined by petitioner/applicant.
10. Respondent Arvind Sukla (NAW-1) has admitted that he had love affair with petitioner and when petitioner became pregnant she came to his house and started living with him. No marriage was performed between them. In the year 2009 the petitioner was appointed as teacher in Gurukul School and presently she is a teacher in another Play School. In cross-examination, he has admitted that he had given an affidavit in PS-Balodabazar to the effect that he has married with petitioner. He has also admitted that in the documents for purchasing scooter his name has been shown as husband of petitioner. He has further admitted that they lived as husband and wife for about three years.

11. Manmohan Shukla NAW-2 has supported the statement of the respondent. However, in cross-examination he has admitted that petitioner and respondent lived as husband and wife in his house.
12. After scrutinizing the evidence brought by both the parties, it appears that there is a requirement under Section 125 of CrPC that the wife for the purposes of this provision means a legally wedded wife. The evidence on record show that some rituals were performed but all the rituals were not performed, even then petitioner Apeksha Sukla and respondent had a recognition as husband and wife. This has also been admitted by Manmohan Shukla NAW-2, who is the father of respondent. In the proceeding under Section 125 of CrPC strict proof of marriage is not required, hence, the proof that is on record is sufficient proof to hold petitioner Apeksha Sukla and respondent, as husband and wife. The conclusion arrived at by the revisional Court vide order dated 25.8.2014 passed in Revision Petition No.37/2013 being erroneous needs to be interfered with.
- 13.Regarding the findings of the Court of CJM, Balodabazar and the revisional Court on the point of entitlement of petitioner Apeksha Sukla for maintenance, there appears to be no requirement for interference because petitioner herself has admitted in evidence that she is capable to earn and maintain herself. There is nothing on record to give a finding other than the finding recorded by the Court of CJM and affirmed by the revisional court.
- 14.After scrutinizing and analyzing the evidence on record and submissions made in this respect, this Court comes to a conclusion that CrMP

No.1018 of 2014 is meritless and it is accordingly dismissed.

15. On the basis of finding arrived at in this order Cr.M.P. No.1019 of 2014 deserves to be allowed and the same is hereby allowed. Impugned order dated 25.4.2014 passed by the 3rd Additional Sessions Judge, Balodabazar in Revision Petition No.37 of 2013 is hereby set aside.

Sd/-
(Rajendra Chandra Singh Samant)
JUDGE

Nisha