

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR
OF CHHATTISGARH, BILASPUR

CRR No. 802 of 2016

- Smt. Sukhiya Bai @ Bhuri Bai W/o Seva @ Sevaram Aged About 54 Years (Approx), R/o Village Bansapur, Post Office Khandtara P.S. Bemetara, Tah. & District - Bemetara Chhattisgarh

---- Applicant

Versus

- Seva @ Seva Ram S/o Gangu Aged About 65 Years (Approx), Residence - Village - Chhitapar, Post Office - Chhitapar, P.S. - Bemetara, Tah. & District - Bemetara Chhattisgarh

---- Respondent

For Applicant – Shri K.R. Loniya, Advocate.

None for the respondent though deemed served as per order dated 28.2.2017.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order

23/03/2017

1. The applicant had filed the instant Cr. Revision under Section 19 (4) of the Family Courts Act, 1984 against the order passed by the Additional Principle Judge, Family Court Link Court Bemetara (CG) in M.Cr.C. No.185/2011 on 24.8.2013 whereby and whereunder the application filed by the applicant before the court below for grant of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (for short the Code) is dismissed on the ground that the applicant failed to prove that she is the legally wedded wife of the respondent and also as there is no statement on oath that she is unable to maintain herself.
2. The case of the applicant in brief is that about 30 years ago from the filing of said M.Cr.C. duly instituted on 22.9.2011, the respondent under the custom prevailing in their community made Chudi wife to the applicant and thereafter,

both the parties consumed the said Chudi marriage as husband and wife for about 1½ years. When the applicant was pregnant of 5-6 months, the respondent after marriage got her out from the house and thereafter, after a period of 1 year, the respondent made Anjani Bai as his second wife. Out of the physical relations of the applicant and the respondent, son Dwarika born on 7.6.1983. On account of ill health, the applicant is not in a position to perform labour work. She is not having any source of income. With this, she prayed that the respondent is having sufficient means neglects and refuses to maintain the applicant, therefore, the applicant prayed for the maintenance of Rs.3000/- p.m.

3. In response the respondent pleaded that the applicant had filed a Civil Suit before the Civil court Bemetara which was dismissed. With this, the applicant had failed to prove that she is Chudi wife of the respondent and a son born out of the physical relations. As the applicant is not the wife of the respondent, the respondent does not owe any responsibility to maintain the applicant hence, prayed before the court below to dismiss the petition of maintenance.

4. On 25.4.2013, the respondent remained ex parte in the matter heard by the court below. The applicant deposed before the trial court the evidence of Garibdas @ Gariba adduced under the provisions of Order 18 Rule 4 CPC. The applicant also adduced document annexures A/1 and A/2, the copy of form B1, Kisht Bandi Khatoni showing immovable property in the name of the respondent and also annexure A/3 which is the death certificate of Dwarika born on 7.6.1983.

5. After the evidence adduced by the applicant, the Court below heard the matter finally vide order dated 24.8.2013 and dismissed the petition of maintenance filed by the applicant. Against the said order the applicant had preferred the instant Cr. Revision for a prayer that the Chudi marriage is a

recognized and legal marriage in Mehar caste and also the applicant is a poor lady and the respondent had sufficient assets showing the source of income. It is prayed in the instant petition that the order passed by the court below be set aside and the order of maintenance in favour of the applicant may be granted.

6. Despite service the respondent is not represented.

7. Heard learned counsel for the applicant who submitted that as per para 10 of the impugned order it is proved that about 30 years ago the respondent made the applicant as Chudi wife a custom prevalent in their community. As per annexure A/3 Dwarika born on 7.6.1983. Parties remained and consumed the relation of husband and wife for 1 ½ years and when the applicant was pregnant of 5-6 months, she was thrown out after committing marpeet by the respondent.

8. Learned counsel further submits that the applicant's witness Garibdas @ Gariba also supported the fact that for about 1½ years to 2 years parties consumed the relation like husband and wife with this it is proved that the applicant is wife of the respondent and unable to maintain herself, hence, revision may be allowed. The order passed by the court below be set aside and she may be ordered for maintenance.

9. Perused the evidence adduced by the applicant before the trial Court.

10. For relevance Section 125 (1) Cr.P.C. is reproduced here:

125.Order for maintenance of wives, children and parents.-

(1) If any person having sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain himself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is by reason of any

physical or mental abnormality or injury unable to maintain itself, or (d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.]

Explanation.- For the purposes of this Chapter, -

(a) "minor" means a person who, under the provisions of the Indian

Majority Act, 1875(9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

11. On perusal of statement on oath under Order 18 Rule 4 CPC, the applicant has not said anything that she is unable to maintain herself. This fact is a material issue as mentioned in Section 125 (1) (a) Cr.P.C. Also otherwise as per fact of the case, about 30 years ago, the said Chudi marriage was completed and as per allegation after consumption of physical relation for 1½ years only the respondent thrown the applicant out after committing marpeet with this for about 28 and ½ years, the applicant had never approached to the court for maintenance.

12. In the petition para 6 it is submitted that the applicant was earning his bread by the job of labour and thereafter, now as she is ailing and not able to do the labour job. But the ailment and inability is not in the statement on oath under Order 18 Rule 4 CPC goes to show that the applicant has not proved through her evidence that she is unable to maintain herself. The court below further dismissed the claim of the applicant on the ground that Chudi marriage is not comes under the ambit of definition of wife. The court below relied on few case laws cited. During the arguments, learned counsel for the applicant failed to demonstrate any case law that the Chudi marriage may be termed as wife for the purpose of Section 125 Cr.P.C. Also live in relationship for 1½ years may not be held as the relation of husband and wife between the parties.

13. On due consideration, as the applicant failed to prove that she was the wife of respondent and also that she is unable to maintain herself and the petition is dismissed after consideration of the entire material. In the considered view of this court the order passed by the court below is just and proper and as

per facts of law and I do not see any reason to interfere.

14. Consequently, the Cr. Revision is dismissed as sans substance.

Sd/

(Chandra Bhushan Bajpai)
Judge