

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.861 of 2017

Order Reserved on : 30.4.2018

Order Passed on : 26.7.2018

Khilendra, son of Vishwanath Sonkar, aged about one year and four months, minor through the legal guardian mother Smt. Yashodabai Sonkar, wife of Vishwanath Sonkar, aged about 24 years, at present R/o through father Gandhiram Sonkar, Sevatatila, Ward No.9, Dongergaon, Tahsil Dongergaon, District Rajnandgaon, Chhattisgarh

---- Applicant

versus

Vishwanath Sonkar, son of Motiram Sonkar, aged about 27 years, Agriculturist and R/o Village Pisoud, P.S. Sanjari, Tahsil Doundilohara, District Balod, Chhattisgarh

--- Respondent

For Applicant : Shri Abhishek Sharma, Advocate
For Respondent : Shri Tarun Dansena, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. This revision is directed against the order dated 10.4.2017 passed by the Family Court, Rajnandgaon in Miscellaneous Criminal Case No.59 of 2016, whereby the Family Court has rejected the application of the Applicant moved under Section 125 of the Code of Criminal Procedure.
2. Facts of the case, in brief, are that an application under Section 125 of the Code of Criminal Procedure was preferred by the Applicant before the Family Court stating that he is the son of the Respondent. Marriage between the Respondent and Yashodabai, mother of the Applicant was performed on 11.5.2011. After 6 months of the marriage, the Respondent started committing cruelty

with Yashodabai and demanded her jewellery from her and sold the same in the market. This was intimated by her to her father Gandhiram. Gandhiram called a village meeting. In that meeting, the Respondent admitted his guilt and promised that he will not commit any mistake in future. Thereafter, he again started committing cruelty with Yashodabai. Finally, on 1.4.2014, Yashodabai left the house of the Respondent/husband. At that time, she was carrying a pregnancy of 2 months. Thereafter, on 28.11.2014, she gave birth to a male child, i.e., the present Applicant. The Respondent filed his reply to the application under Section 125 of the Code of Criminal Procedure and denied the averments. He specifically denied the averment that the Applicant is his son. Both the parties led their evidence. Thereafter, vide the impugned order dated 10.4.2017, the Family Court rejected the application of the Applicant under Section 125 of the Code of Criminal Procedure on the ground that the Applicant is not the child of the Respondent and, therefore, he is not entitled to get any maintenance from the Respondent.

3. Learned Counsel appearing for the Applicant submitted that the Family Court has committed illegality in rejecting the application under Section 125 of the Code of Criminal Procedure. The Family Court has failed to appreciate that the mother of the Applicant had finally left the house of the Respondent/husband on 1.4.2014 and the Applicant took birth on 28.11.2014. He further submitted that the birth certificate of the Applicant is duly proved and the said certificate has not been challenged by the Respondent at any forum. He further submitted that the Family Court has failed to appreciate that earlier before the same Court in M.Cr.C. No.58 of

2014, during examination, the Respondent/husband had admitted that the Applicant's mother lived in his house upto 26.3.2014. From the above also, it is clear that the Applicant is the legitimate child of the Respondent. Therefore, the impugned order of the Family Court is not maintainable.

4. Learned Counsel appearing for the Respondent submitted that Yashodabai, mother of the Applicant and her father Gandhiram (Applicant Witness No.2) have admitted the fact that Yashodabai was residing in her paternal house since 22.4.2013 and she delivered the Applicant on 28.11.2014. After 22.4.2013, no physical relationship took place between the Respondent and Yashodabai. Therefore, the Applicant is not the child of the Respondent. Hence, the Family Court has rightly rejected the application under Section 125 of the Code of Criminal Procedure moved by the Applicant.
5. I have heard Learned Counsel appearing for the parties and perused the record minutely.
6. Admittedly, marriage of the Respondent and Yashodabai, mother of the Applicant was solemnised on 11.5.2011. The Applicant took birth on 28.11.2014. There is nothing on record to show that the said marriage ever dissolved. Section 112 of the Indian Evidence Act, 1872 runs thus:

“112. Birth during marriage, conclusive proof of legitimacy.—The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive

proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.”

7. As per the contention of the Respondent, from 22.4.2013 Yashodabai, mother of the Applicant was living in her paternal house and thereafter no physical relationship took place between her and the Respondent. Therefore, the Applicant cannot be held to be a legitimate child of the Respondent. Though Yashodabai and her father Gandhiram (Applicant Witness No.2), in their cross-examinations, have admitted the fact that since 22.4.2013, Yashodabai was living in her paternal house, Gandhiram has further stated in paragraph 7 of his cross-examination that thereafter his daughter Yashodabai had again lived in her matrimonial house for about 1½ months. In paragraph 7 of examination-in-chief, Yashodabai has categorically stated that on 30.4.2013, the Respondent had taken her back along with him and thereafter on 1.4.2014, she had returned to her paternal house along with her father and at that time, she was pregnant. The above statement is not rebutted during her cross-examination. From perusal of Annexure A-3, it is also clear that in M.Cr.C. No.58 of 2014, during his cross-examination, the Respondent, in paragraph 15, has categorically admitted that on 1.4.2014, Yashodabai was taken back by her father. From the above also, it is clear that Yashodabai lived with the Respondent/husband at her matrimonial house till 1.4.2014. In the instant case, during cross-examination, the Respondent has admitted the fact that after birth of the Applicant, he never called any village meeting claiming that the Applicant is not his child. From the above, it is clear that till

1.4.2014, Yashodabai lived with the Respondent at her matrimonial house. Thereafter, on 28.11.2014, the birth of the Applicant took place. Therefore, the Applicant is a legitimate child of the Respondent. Hence, the finding arrived at by the Family Court holding the Applicant not to be a child of the Respondent is not in accordance with law.

8. Considering the facts and circumstances of the case, social status of the parties and financial status of the Respondent, it would be in the interest of justice to grant maintenance of Rs.2,000/- per month in favour of the Applicant. Ordered accordingly. This maintenance shall be payable by the Respondent to the Applicant with effect from today.
9. Consequently, the revision is allowed in the aforesaid terms.
10. Record of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-
(Arvind Singh Chandel)
JUDGE