

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1468 of 2017

Butan Ram Katare S/o Tilakdhari, Aged About 40 Years Occupation Teacher, R/o Village Parasdiha, Tahsil Wadrafnagar, Police Thana Chalgali, District Balrampur Ramanujganj Chhattisgarh, Present Address Gandhi Nagar, Ambikapur District Surguja Chhattisgarh., Chhattisgarh
--- Petitioner

Versus

Prahlad Katare S/o Butan Ram Katare, Aged About 17 Years Minor Natural Guardian Mother Smt. Laychi Harijan W/o Butan Ram Katare, Aged About 38 Years, R/o Maheva Harijanpara, Tahsil Wadrafnagar, District Balrampur Ramanujganj Chhattisgarh., Chhattisgarh ---
Respondent

For the applicant : Mr. Vikas Pandey, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

17.01.2018

1. Heard.
2. The present petition is against the order dated 18.04.2017 passed by the Additional Sessions Judge, Ramanujganj, Distt. Sarguja in Criminal Revision No.R-24/2016 whereby the order passed by the JMFC in Misc. Criminal case No.188/2011 directing the petitioner to pay the maintenance of Rs.2000/- per month to the respondent minor son has been affirmed.
3. Learned counsel for the petitioner would submit that the order of the court below is completely misconceived as there is no finding to the fact that the respondent is the son. He further submits that initially the claim for maintenance was made by the alleged wife Smt. Laychi and Prahlad Katare, the respondent being a minor son before the JMFC u/s 125 of Cr.PC. wherein the trial court has held that Laychi the alleged

wife is not the legally wedded wife and however applicant No. 2 therein, Prahlad Katare is held to be son is completely without any evidence. Therefore, under the circumstances of this case when the fraternity itself is denied, no compensation can be granted to respondent No. 2 without affirming the fact that respondent No. 2 is the son.

4. Perused the record of the court below. A perusal thereof would show that initially Laychi showing herself to be the wife of petitioner and Prahlad Katare the minor son have filed application u/s 125 Cr.PC claiming maintenance of Rs. 3000/- each from the petitioner claiming that without any reasonable cause, he failed to maintain the wife and son. In the said proceeding u/s 125 Cr.P.C., before the JMFC, the evidence of the parties were adduced.
5. The learned court of JMFC after evaluating the evidence, came to conclusion that Smt. Laychi was not able to prove the fact that she is legally wedded wife. However, the trial Court found that applicant No. 1 Prahlad Katare is the son who was born out of the relation between Butan Ram Katare and Smt. Laychi, consequently, the order for payment of maintenance to the minor son was passed. It appears that the order was only subject of challenge in revision by the petitioner Butan Ram Katare. Smt. Laychi who was the applicant in the trial court did not prefer to file any revision nor challenged the finding of the court of JMFC dated 24.02.2014 passed in Criminal Case No. 188/2011.
6. The revisional court after going through the evidence came to conclusion that the order passed by the JMFC is well merited which do not warrant interference.

7. I have perused the evidence adduced before the court of JMFC wherein Smt. Laychi has been examined as PW-1. She has stated in the cross-examination that the petitioner had not obtained legal separation or separation according to the caste custom from the first wife, however, performed engagement with her and thereafter started living with her and out of such relation, the son was born. The statement of PW-2 Matukdhari was also recorded wherein he has stated that Laychi was brought as a wife and subsequently a son was born. Therefore, the first wife was also brought back. The statement of the petitioner Butan Ram Katare was recorded wherein he has admitted the fact in cross-examination that he brought Laychi after engagement. The statement would further show that in the marks-sheet of the son, the name of the petitioner has been shown as father which has also not been objected by him. The facts show that mother Laychi has stayed with the petitioner for a considerable time and thereafter a child was born. He further admits that he is working as a teacher in a school wherein he is earning Rs. 35000/- per month and in addition he is in possession of 50 acres of land. The statement of DW-2 admitted the fact that the petitioner has married Laychi and out of the wedlock, the respondent son was born and they were living as husband and wife together. Therefore, according to the witness of the petitioner himself, he has married Laychi and out of the wedlock the child was born who is the respondent herein. It is also admitted that the petitioner is drawing the salary of Rs. 35000/- per month and that apart, he possesses the lands of 50 acres.

8. Considering the same, I do not find any illegality in the orders of both the courts below whereby an amount of Rs. 2000/- has been granted to the minor son.
9. In view of the above discussion, it is directed that the petitioner shall be liable to pay the entire arrears of the maintenance amount to the respondent within a period of 30 days from today and the respondent be informed by the Legal Aid operating in the jurisdiction about the result of this order that the petition filed by his father has been dismissed. It is also observed that the respondent if so desires shall be at liberty to move a suitable application for enhancement of the amount amount of maintenance granted by the trial Court. The Legal Aid operating there shall also provide assistance to the respondent and in case the amount is not paid within 30 days, the entire amount shall be recovered from the salary of the petitioner forthwith.
10. With such observation and direction for compliance, this petition stands disposed of.

**Sd/-
GOUTAM BHADURI
JUDGE**