

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.1109 of 2017

1. Smt. Durga Bai, aged about 35 years, W/o Dukhu Ram Kashyap, D/o Shri Shyam Lal,
2. Ku. Priyanka, aged about 15 years, D/o Dukhu Ram Kashyap, Minor through her natural guardian mother Smt. Durga Bai, aged about 35 years, W/o Dukhu Ram Kashyap,
3. Rahul Kashyap, aged about 11 years, S/o Dukhu Ram Kashyap, minor through her natural guardian mother Smt. Durga Bai, aged about 35 years, W/o Dukhu Ram Kashyap
4. Akash Kashyap, aged about 9 years, S/o Dukhu Ram Kashyap, minor through her natural guardian mother Smt. Durga Bai, aged about 35 years, w/o Dukhu Ram Kashyap,

All R/o Village Khamharia, Tahsil Takhatpur, District Bilaspur, Chhattisgarh presently R/o Village Siltara, Tahsil Takhatpur, District Bilaspur, Chhattisgarh

---- Applicants

versus

Dukhu Ram Kashyap, aged about 42 years, S/o Late Keja Ram Kashyap, R/o Village Khamharia (Karankapa), Tahsil Takhatpur, District Bilaspur, Chhattisgarh

--- Respondent

For Applicants	:	Shri Ravindra Agrawal, Advocate
For Respondent	:	Shri P.M. Shriwas, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

24.9.2018

1. With the consent of Learned Counsel appearing for the parties, the matter is heard finally.
2. The instant revision has been preferred against the order dated 22.9.2017 passed by the Family Court, Bilaspur in M.Cr.C. No.403 of 2015, whereby the Family Court has rejected the application of Applicant No.1 for grant of maintenance on the ground that she is not a legally wedded wife of the Respondent and has granted

monthly maintenance of Rs.1,000/- in favour of each of Applicants No.2, 3 and 4, total Rs.3,000/-.

3. Learned Counsel appearing for the Applicants submits that the Family Court, considering the fact that Applicant No.1 resided with the Respondent for about 18 years and 3 children have also taken birth out of their wedlock, ought to have granted maintenance in favour of Applicant No.1. He also submits that looking to the financial status of the Respondent, the maintenance granted in favour of Applicants No.2, 3 and 4 is on lower side.
4. Learned Counsel appearing for the Respondent opposes the arguments advanced on behalf of the Applicants and supports the impugned order.
5. I have heard Learned Counsel appearing for the parties and perused the record with due care.
6. It was pleaded by the Applicants before the Family Court that 17 years before, marriage between the Respondent and Applicant No.1 had taken place and Applicants No.2, 3 and 4 took birth out of their wedlock. 1½ years before, the Respondent, after beating the Applicants, ousted them from his house and since then they are residing separately from him and they are unable to maintain them. The Respondent owns approximately 22 acres of agricultural land from which he earns Rs.10 Lakhs per year. In his reply, the Respondent admitted the fact that Applicants No.2, 3 and 4 are his children. He further pleaded that 20 years before, he had married Kantibai and from that marriage, he has 4 children. Therefore, Applicant No.1 is not his legally wedded wife and thus, she is not

entitled to get maintenance. In paragraph 10 of his cross-examination, the Respondent has categorically admitted the fact that he resided with Applicant No.1 as husband and wife for about 18 years and out of their relationship, Applicants No.2, 3 and 4 took birth. In paragraph 13, he has further admitted the fact that when Applicant No.1 was residing with him at his house, she was not working. Non-Applicant Witness No.2 Dilip Kashyap, in paragraph 3 of his cross-examination, has also admitted that marriage of Applicant No.1 was performed with the Respondent 17-18 years before and out of their wedlock, 3 children have taken birth. He has also admitted that though earlier the Respondent had also married a woman Kantibai of Gond Caste, as Kantibai does not belong to the caste of the Respondent she was not seen with him. Thus, it is clear that Kantibai never resided with the Respondent and Applicant No.1 resided with the Respondent for about 18 years and out of their wedlock, 3 children have also taken birth.

7. The Respondent has not adduced any legal evidence regarding his marriage with Kantibai. He has not adduced any evidence regarding the place and date of the said marriage. Therefore, his marriage with Kantibai is suspicious. Even if for the sake of argument it is considered that Respondent's first marriage was solemnised with Kantibai, from the record it is clear that she never resided with him. Rather, from the record, it is established that Applicant No.1 resided with the Respondent as his wife for about 18 years and 3 children have also taken birth out of their wedlock.
8. In **(2011) 1 SCC 141 (Chanmuniya v. Chanmuniya Virendra Kumar Singh Kushwaha)**, it has been observed by the Supreme

Court thus:

“46. We are of the opinion that a broad and expansive interpretation should be given to the term 'wife' to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a pre-condition for maintenance u/s 125 of the Cr.P.C., so as to fulfil the true spirit and essence of the beneficial provision of maintenance u/s 125.”

9. In the light of above-quoted observation, in the case in hand, Applicant No.1 shall be treated as legal wife of the Respondent for the purposes of maintenance under Section 125 of the Cr.P.C. and, therefore, she is entitled to get maintenance from the Respondent.
10. From the record, it is also established that the Respondent possesses about 8 acres of agricultural land and he has also admitted that the said land is an irrigated land and 2 crops are taken from that land. Thus, the Respondent has sufficient means to maintain the Applicants.
11. Looking to the above-stated financial status of the Respondent, the grant of monthly maintenance in favour of Applicants No.2, 3 and 4 is on lower side. Applicant No.1/wife deserves to be granted monthly maintenance of Rs.2,000/- and the maintenance granted in favour of Applicants No.2, 3 and 4 deserves to be enhanced from Rs.1,000/- each to Rs.2,000/- each.
12. Therefore, Applicant No.1/wife is granted monthly maintenance of Rs.2,000/- payable to her with effect from the date of the impugned order dated 22.9.2017 passed by the Family Court. The monthly

maintenance of Rs.1,000/- each granted by the Family Court in favour of Applicants No.2, 3 and 4 is enhanced to Rs.2,000/- each payable with effect from today.

13. Consequently, the revision is allowed to the extent indicated above.
14. 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