

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 247 of 2007

Order reserved on 15.01.2019

Order pronounced on 22 .01.2019

1. Budhiyarini Bai Chandrakar wife of Rajendra Chandrakar, aged about 30 years
2. Ku. Suneeta D/o Rajendra Chandrakar, aged 02 years, through guardian (Mother) applicant No.1

--- Applicants

Versus

1. Rajendra Chandrakar son of Shambhu Chandrakar, aged 40 years, R/o village Gambhara, PS Bhilai-3, District Durg, CG

--- Respondent

For Applicant	-	Shri Vinod Kumar Sharma, Advocate.
For Respondent	-	None appeared.

CAV Order by Hon'ble Smt. Vimla Singh Kapoor, J.

Applicants herein who claim to be the wife and daughter of respondent Rajesh Chandrakar have filed this revision petition against the order dated 02.02.2007 rejecting their application under Section 125 of the Code of Criminal Procedure seeking maintenance of Rs. 3000/- and 2000/- respectively.

2. According to the plea of applicant - Budhiyarini Bai Chandrakar, six months prior to filing of application under Section 125 of the Code of Criminal Procedure the respondent had married her in the temple at Dongargarh and thereafter they lived in the house of one Padam Sahu at Sikola Bhata, Durg as a tenant where

in the year 2002 applicant No.2 was born out of their wedlock. Her plea is that in the year 2003 the respondent left their company and when did not return for days together, report to that effect was lodged at Mohan Nagar police station on 19.12.2003 but the police did not take any action thereon. Her further plea is that on account of being unable to maintain herself and also her minor daughter, the applicant having monthly income of Rs. 6000/- and possessor of 7 acres of agriculture land, is required to pay her the maintenance quantified above.

3. Denying the averments made by the applicant No.1, it has been stated by the respondent that for several years she was working with him as a labourer but he never married her nor applicant No.2 is his daughter. According to the respondent, his marriage with one Kiran Bai was performed about 18-20 years back and out of their wedlock four children were born and that he was living with his family members. According to him, applicant No.1 was already a married lady and has not divorced her husband. He has also denied his monthly income as alleged including his ownership of seven acres of land.

4. Having perused the documents on record learned Court below has rejected the application filed by the applicants under Section 125 of the Code of Criminal Procedure by an elaborate order impugned in this revision.

5. Counsel for the applicants submits that the Court below has gone wrong in rejecting the application under Section 125 of the Code of Criminal Procedure though they are the wife and daughter

of the respondent. He submits that the order impugned may be set aside and the applicants may be granted suitable maintenance.

6. No representation however is made on behalf of the respondent to put forth his stand-point.

7. The first thing to be decided by this Court is whether the applicants are the wife and daughter of the respondent herein and to do that examination of the evidence of the witnesses and other material on record would be necessary. From the evidence of applicant who has been examined as (AW-1) it is clear that the respondent herein was already married to one Kiran and four children were born out of their wedlock. Her evidence further shows that she was working as labourer in the house of respondent and that from her first husband Raju she had one son and that no divorce with her first husband ever took place. She has expressed her ignorance about the re-marriage performed by her first husband. She has further stated that she did not lodge any report after having an issue through the respondent. Ansuiya (PW-2) has stated that applicants and respondent were living in her house as husband and wife. According to her, daughter of applicant was not born in her house but was born at Sikolabhata. She has clarified that the applicant No.1 was already having the daughter before coming to live in her house. Chanda Bai (PW-3) has also stated that disowning the applicant No.2 as his daughter, the respondent herein always used to pick up quarrel with applicant No.1. Rajendra Kumar (NAW-1) has also stated that he never married the applicant No.1 nor he is the biological father of applicant No.2. These facts

undisputedly go to show that the marriage of applicant No.1 with her first husband Raju never ended by a decree of divorce and therefore it is still in existence. This fact has been admitted even by the applicant No.1 herein. Likewise, the respondent herein is also married to one Kiran and is having four children out of the wedlock. One of the witnesses has stated that the respondent always quarrelled with applicant No.1 on account of disowning applicant No.2 as his daughter. Most important witness to all this could be Padam Sahu in whose house the applicant No.1 is said to have lived after marrying the respondent but unfortunately he has not been examined by the applicant for the reason best known to her.

7. In aforesaid view of the matter the applicant No.1 herein cannot be said to be a legally married wife of the respondent and applicant No.2 his legitimate child as the first marriage of applicant No.1 with some Raju is still in existence which has been admitted even by herself. When the relationship of husband and wife could not be established, quantification of the maintenance amount considering his income and ownership of land etc. would be a futile exercise. Court below has not committed any error in rejecting the claim of the applicants for maintenance and being so the order impugned is affirmed.

8. Revision being without any merits is liable to be and is hereby dismissed.

Sd/-

(Vimla Singh Kapoor)
Judge