

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.645 of 2013

Order Reserved on : 29.1.2019

Order Passed on : 22.4.2019

Jagturam Sethiya, S/o Jagannath Sethiya, 50 years, R/o Village Alnar,
Tahsil Lohandiguda, P.S. and Post Lohndiguda, District Bastar,
Chhattisgarh

---- Applicant

versus

1. Smt. Rambati, W/o Shri Jagturam Sethiya, 39 years,
2. Hemlata, D/o Shri Jagturam Sethiya, 20 years,
Both R/o Village Alnar, Tahsil Lohandiguda, P.S. and Post Lohndiguda,
District Bastar, Chhattisgarh

--- Respondents

For Applicant	:	Shri Keshav Dewangan, Advocate
For Respondents	:	Shri Rajkumar Pali, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. This revision has been preferred against the order dated 14.8.2013 passed by the 1st Additional Sessions Judge, Jagdalpur in Criminal Revision No.30 of 2008, whereby the Additional Sessions Judge has reversed the finding of the Judicial Magistrate First Class, Jagdalpur and granted monthly maintenance of Rs.1,000/- in favour of Respondent No.1.
2. Facts of the case, in a nutshell, are that both the Respondents filed an application under Section 125 Cr.P.C. before the Judicial Magistrate First Class, Jagdalpur. It was pleaded by them that 20 years prior to filing of the said application, marriage between the Applicant and Respondent No.1 was solemnised in a temple

situated at Village Alnar. Out of their wedlock, Respondent No.2 took birth. It was further pleaded that 1 year before filing of the application, the Applicant left both the Respondents and started residing separately. Both the Respondents are unable to maintain themselves. The Applicant has sufficient means to maintain them. He is earning Rs.30,000/- per month from all sources. In his reply, the Applicant denied all the allegations made against him. He also denied his marriage with Respondent No.1. He also denied Respondent No.2 to be his daughter. It was pleaded by him that 35 years ago, his marriage was solemnised with a woman Kanwaldei and he has also six children from her. The eldest daughter from her is aged about 32 years and she has been married and now she has four children. Respondent No.1 is neither his legally wedded wife nor did they ever live together as husband and wife. Respondent No.2 is neither his legitimate nor illegitimate child. Therefore, none of the Respondents is entitled to get maintenance from him. Before the Judicial Magistrate First Class, both the parties adduced their evidence. After hearing the parties, the Judicial Magistrate First Class, vide order dated 26.7.2008, rejected the application on the ground that Respondent No.1 is the second wife of the Applicant and, therefore, she is not entitled to get any maintenance. It was further observed by the Judicial Magistrate First Class that since Respondent No.2 is a major girl and has already been married, she is also not entitled to get any maintenance. Against the said order, both the Respondents filed a revision, being Criminal Revision No.30 of 2008 before the Court of Session. The Additional Sessions Judge, vide the impugned order dated 14.8.2013, reversed the finding with regard to Respondent No.1 and allowed the application in her

favour on the ground that it is not established that she is second wife of the Applicant and, therefore, she is legally wedded wife of the Applicant and thus granted maintenance of Rs.1,000/- in her favour. Hence, this revision.

3. Learned Counsel appearing for the Applicant submitted that there is nothing on record on the basis of which it could be established that any marriage was performed between the Applicant and Respondent No.1. There is also no evidence on record on the basis of which it could be established that the Applicant and Respondent No.1 ever lived together as husband and wife. From the evidence on record, it is well established that the Applicant has already married Kanwaldei 35 years ago and out of their wedlock six children have also taken birth. Therefore, finding of the Additional Sessions Judge/Revisional Court that Respondent No.1 is legally wedded wife of the Applicant is not in accordance with the evidence on record. Since Respondent No.1 is not legally wedded wife of the Applicant nor did they ever reside together as husband and wife, Respondent No.1 is not entitled to get any maintenance from the Applicant.
4. Learned Counsel appearing for the Respondents supported the impugned order of the Revisional Court. He submitted that the revision preferred by the Respondents against the order of the Judicial Magistrate First Class has already been decided by the Additional Sessions Judge, therefore, a second revision is barred and as such the present revision is not maintainable.
5. I have heard Learned Counsel appearing for the parties and perused the records with due care.

6. As regards maintainability of the instant revision, in **(2009) 3 SCC 310 (Shakuntala Devi v. Chamru Mahto)**, it was observed by the Supreme Court as under:

“24. It is well settled that the object of the introduction of sub-section (3) in Section 397 was to prevent a second revision so as to avoid frivolous litigation, but, at the same time, the doors to the High Court to a litigant who had lost before the Sessions Judge were not completely closed and in special cases the bar under Section 397(3) could be lifted. In other words, the power of the High Court to entertain a petition under Section 482, was not subject to the prohibition under sub-section (3) of Section 397 of the Code, and was capable of being invoked in appropriate cases. Mr. Sanyal's contention that there was a complete bar under Section 397(3) of the Code debarring the High Court from entertaining an application under Section 482 thereof does not, therefore, commend itself to us.”

In **(1988) 1 SCC 537 (Bakulabai v. Gangaram)**, it was observed thus:

“4. On the maintainability of the revision application before it the High Court took an erroneous view. The provisions of Sub-section (3) of Section 397, relied upon, are in the following terms:

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

The main judgment of the Judicial Magistrate upholding the appellants' claim for maintenance was in her favour and there was no question of her challenging the same. Her challenge before the Sessions Judge was confined to the part of the order assessing the amount of maintenance, and this issue could not have been raised again by her. Subject to this limitation she was certainly entitled to invoke the revisional jurisdiction of the High Court. The decision on the merits of her claim went against her for the first time before the Sessions Judge,

and this was the subject matter of her revision before the High Court. She could not, therefore, be said to be making a second attempt when she challenged this order before the High Court. The fact that she had moved before the Sessions Judge against the quantum of maintenance could not be used against her in respect of her right of revision against the Sessions Judge's order. Accordingly, the decision of the High Court on this question is set aside and it is held that the revision petition of the appellant before the High Court, except the prayer for enhancing the amount was maintainable."

7. In the case in hand also, a revision, being Criminal Revision No.30 of 2008 was preferred by the Respondents before the Court of Session. Though the Applicant was a party to the revision, the revision was preferred by the Respondents. Therefore, as contained in sub-section (3) of Section 397 Cr.P.C., a second, i.e., present revision, which has been preferred by the Applicant, is maintainable.
8. In her Court statement, Respondent No.1, Smt. Rambati has stated that 20 years ago, her marriage was performed with the Applicant in a temple at Village Alnar where she resides by wearing garland to each other and thereafter she started living with the Applicant at Village Alnar itself. She has further stated that 2 years prior to recording of her present statement, the Applicant left her and started living separately. Applicant Witness No.3, Ghasnin, who is a cousin of Respondent No.1 has also stated that marriage of Respondent No.1 was performed with the Applicant in Shiv Temple at Village Alnar and at that time she was present there. This witness is a resident of Village Deurgaon. At the time of said marriage, who were present there and who performed their marriage, nothing in this regard has been stated by Respondent No.1 nor has she examined any of the villagers of Village Alnar in

this regard. She has also not stated that in whose house she was living with the Applicant at Village Alnar. As stated by her, she has lived with the Applicant at Village Alnar for about 20 years, but she has not examined any of the villagers of Village Alnar in support of this fact. There is no evidence on record to establish that the Applicant and Respondent No.1 ever lived together at Village Alnar as husband and wife. Contrary to this, from the statements of the Applicant and his legally wedded wife Kanwaldei, it is well established that 35 years ago, marriage of Kanwaldei was performed with the Applicant and out of their wedlock, six children have also taken birth. Their above statement is duly corroborated by the Applicant's witness Non-Applicant Witness No.3, Harchand. Respondent No.1 has submitted certain documents before the Judicial Magistrate First Class. In those documents, which are voter list (Ex.P1), voter identification card (Ex.P3A), birth certificate (Ex.P2) of Respondent No.2 issued by the school and mark-sheet (Ex.P3C) of Respondent No.2, name of the Applicant is entered as husband of Respondent No.1 and father of Respondent No.2, but when, how and by whom those entries were got done in those documents, no evidence is adduced in this regard. Therefore, only on the basis of those documents, it cannot be held that Respondent No.1 is wife of the Applicant and both resided together as husband and wife. Thus, finding of the Additional Sessions Judge that the Applicant and Respondent No.1 are husband and wife is not in accordance with the evidence available on record. Since Respondent No.1 is not a legally wedded wife and it is not established that they ever lived together as husband and wife, Respondent No.1 is not entitled to get any maintenance from the Applicant.

9. Consequently, the present revision is allowed. The impugned order dated 14.8.2013 is set aside.
10. Records of the Courts below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE