

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 690 of 2014**

- Badu Lal S/o Shri Dayalu Ram Aged About 40 Years R/o Village And Post Gotatola, Teh. And Ps Mohla, Distt. Rajnandgaon C.G.,

---- Applicant**Versus**

- Smt. Champa Mandavi W/o Shri Babulal Mandavi Aged About 35 Years Presentlyr/o Shyama Nagar, Rajapara, Distt. North Bastar, Kanker C.G.

---- Respondent

For Applicant	:	Mr. Adil Minhaz, Adv.
For Respondent	:	None, though notice has been served.

Hon'ble Smt. Justice Rajani Dubey**C.A.V. Order****17.09.2019**

1. The present revision petition has been filed by the applicant against the order dated 05.08.2014 passed by learned Family Court Kanker, District North Bastar Kanker (C.G.) in Miscellaneous Criminal Case No. 23/2013, whereby the learned Family Court allowed the application filed under Section 125 of Cr.P.C. by the respondent (wife) and awarded Rs. 1,500/- per month as maintenance in favour of the respondent (wife).

2. Before the Family Court, an application was filed under Section 125 of Cr.P.C, by the respondent (wife) for grant of maintenance on the ground that, her marriage was solemnized with the applicant on 16.05.2010 as per social rites and customs and after sometime, applicant used to ill-treat her for want of dowry, due to that, respondent (wife) left the house of the applicant. Now, since respondent resides separately, she is unable to maintain herself. Conversely, applicant has sufficient means of earning and it is his bounden duty to maintain his wife

(respondent), so she demanded Rs. 10,000/- per month as maintenance.

3. In his reply, respondent denied all the allegations imposed upon him and stated that respondent had married with one Ram Prasad Baghel S/o Raghunath Baghel in the year 2007 with social rites and customs, furthermore, respondent resides separately with the mutual consent of applicant, therefore, she is not entitled to get any maintenance from the respondent.

4. After recording their evidence and hearing submissions, the Family Court vide its impugned order dated 05.08.2014, allowed the application filed by the respondent (wife) under Section 125 of Cr.P.C. and a direction has been issued to the applicant(husband) to pay sum of Rs. 1,500/- per month as maintenance in favour of the respondent(wife). Hence, this revision.

5. Learned counsel for the applicant submits that the impugned order passed by the Family Court is contrary to the law as well as facts and circumstances of the case. He next submits that the question of demand of dowry as per the provisions under Section 125 of Cr.P.C. does not arise at all, as the applicant has never entered into marriage with the respondent. Respondent had married with one Ram Prasad Baghel S/o Raghunath Baghel in the year 2007 with social rites and customs and this fact has been categorically admitted by the respondent (wife) in her cross-examination. He further submits that learned Family Court has failed to appreciate that the respondent has not adduced any documents regarding the dissolution of her first marriage with Ram Prasad Baghel, therefore, she is not entitled to get maintenance from the present applicant. In support his submissions learned counsel for the applicant placed reliance on the decision of Supreme Court in the matter of **Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav & Another** reported in **[(1998) 1 SCC 530]**.

6. None appears on behalf of respondent though notice has been served.

7. Heard learned counsel for the applicant and perused the

material on record including the impugned order.

8. The question which remain for consideration before this Court is that:

(I) whether the respondent is legally wedded wife of applicant?

and/or

(II) if not, whether the maintenance granted to wife deserves to be maintained?

9. Answer to question (I) :-

After perusing the record it is found that both applicant and respondent were divorcee and it was their second marriage. Earlier, applicant Babu Lal married Ganga Bai and this fact has been admitted by applicant. Furthermore, he adduced several documents i.e. Ration Card and school attendance card of their daughter, which corroborates the marriage of applicant (husband) with her first wife Ganga Bai. It is also an admitted fact that soon after their marriage, applicant parted from his first wife Ganga Bai. On the other hand, respondent (wife) also admitted the fact that she was married to one Ram Prasad Baghel S/o Raghunath Baghel in the year 2007 with social rites and customs and she too gave divorce to her first husband Ram Prasad Baghel.

10. Knowing the fact that both the parties are divorcee, they have accepted each other as husband and wife with their mutual consent, in the presence of eminent persons of the society, with social rites & customs, at Shyam Nagar Rajapara, Kanker. This fact has also been supported by Kapil Dev Deepak (DW-3) & Narendra Besre, (DW-4) who is the State President of the same society of the parties i.e. Chhattisgarh Keshariya Gadha Society. Except that, in support of his submission respondent (wife) had filed some photographs relating to her marriage with the applicant (husband) before the Family Court. Furthermore, applicant (husband) had given his written statement before the Police Station, Motla, District Rajnandgaon, relating to the promise of residing harmoniously with his wife (respondent) and admitted in this statement that respondent is his wife. Thus, this Court as well as

Family Court found that the applicant and respondent are legally wedded husband & wife.

11. Answer to question (II):-

Section 125 of Cr. P.C. is reproduced as below:

“If any person having sufficient means neglects or refuses to maintain-

- (a) His wife, unable to maintain herself, or*
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or*
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or*
- (d) His father or mother, unable to maintain himself or herself,*

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly

allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person."

12. Learned Family Court, after appreciating the evidence led by both the parties, has rightly found that respondent Smt. Champa Mandavi is legally wedded wife of the present applicant and this finding of Family Court is in accordance with the evidence available on record as well as in accordance with law.

13. Considering the overall evidence & circumstances of the case, I am of the view that the respondent (wife) is not able to maintain herself and the order impugned awarding Rs. 1,500/- per month as maintenance in favour of the respondent (wife) is absolutely justified and does not require any interference by this Court.

14. Thus, the revision filed by the applicant has no substance and is hereby dismissed.

**Sd/-
(Rajani Dubey)
JUDGE**