

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Order on : 23.10.2019

Order Passed on : 11/11/2019

CR.R. No. 368 of 2019

Manoj Nirmalkar, S/o. Panchram Nirmalkar, Aged About 28 Years, R/o. Village - Jarhagaon, Police Station - Jarhagaon, District Mungeli Chhattisgarh. At Present R/o. House No. A/14, Housing Board Colony, Near Tahsil Office, Korba, Tahsil and District Korba Chhattisgarh.

---- Petitioner

Versus

1. Smt. Bhagwati Bhawani, W/o. Manoj Nirmalkar, Aged About 32 Years,
2. Ku. Lalita Kumar Bhawani, Aged About 14 years,
3. Deeplata Bhawani, Aged About 10 years,

No.2 and 3 Minors, Represented Through Smt. Bhagwati Bhawani, R/o. Rampur Basti, Near Hostel I.T.I. Korba, Tahsil and District Korba Chhattisgarh.

-----Respondents

For Petitioner	: Mr. Aditya Khare, Advocate
For Respondents	: Mr. Anil Tripathi, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

11/11/2019.

1. This revision has been brought challenging the order dated 18.02.2019, passed by the Family Court, Korba in M.J.C. No.62/2018, whereby allowing the application of the respondent

and granting maintenance of Rs.2,000/- to the respondent No.1 along with other reliefs.

2. Respondent No.1 filed an application under Section 125 of Cr.P.C. claiming that she is wife of the petitioner and the respondents No.2 and 3 are their children. The petitioner and the respondent No.1 both were working in Top & Town Hotel in the year 2013, when they get acquainted and the petitioner proposed to marry the respondent No.1. Thereafter, the marriage was performed in presence of Notary on 25.11.2018 regarding which one agreement was also executed. Subsequent to which respondent No.1 started residing with the petitioner. But in the later on development, it was alleged that the petitioner has deserted and he is avoiding to pay any maintenance to the respondent No.1 and her children.
3. Petitioner/non-applicant opposed the application on the ground that there was no legal marriage performed between the petitioner and the respondent No.1. The petitioner had only resided in the house of the respondent No.1 for one month as tenant for which a tenancy agreement was executed. The petitioner has never signed any agreement of marriage. In subsequent development, the petitioner has vacated the house of the respondent No.1 and is living separately.
4. The learned Family Court after completing the enquiry in the application has passed the impugned order.

5. It was submitted by the counsel for the petitioner that respondent No.1 has no entitlement to claim any maintenance from the petitioner for the only reason that she is not the legally wedded wife of the petitioner. The performance of marriage before the Public Notary is not the marriage performed in accordance with the law. The fact that the petitioner had lived in the house of the respondent No.1 as tenant is established in the investigation made by the police on the complaint made by the respondent No.1. The respondent No.1 has in her statement has very clearly stated that the petitioner used to reside in her house as tenant. Therefore, without there being any legal marriage between the petitioner and the respondent No.1, the order impugned is without any basis of law and facts, therefore, this order is not sustainable.
6. Reliance has been placed on the judgment of this Court in **Smt. Sukanya Vs. Balakram**, reported in **2014 (2) C.G.L.J. 611**, in which this Court has very clearly held that woman entering into live-in-relationship would not be entitled for any relief available under Section 125 of Cr.P.C. The judgment of Supreme Court in case of **Indra Sarma Vs. V.K. Sarma**, reported in **AIR 2014 SC 309** has also relied upon.
7. Counsel on behalf of the respondents submits that no error has been committed by the Family Court in holding that the petitioner and the respondent No.1 though are not legally wedded wife but

the petitioner and the respondent No.1 had live-in-relationship from 2014 to 2018. Hence, on this basis, it has been held that respondent No.1 is entitled for grant of maintenance under Section 125 of Cr.P.C, therefore, the order of Family Court is sustainable, which can not be interfered with.

8. I have heard the learned counsel for the parties and perused the documents placed on record.
9. In case of **Indra Sarma (supra)**, it has been observed in Paragraph -53, which reads as under :-

“53. Section 125 Cr.P.C., of course, provides for maintenance of a destitute wife and Section 498A IPC is related to mental cruelty inflicted on women by her husband and in-laws. Section 304-B IPC deals with the cases relating to dowry death. The Dowry Prohibition Act, 1961 was enacted to deal with the cases of dowry demands by the husband and family members. The Hindu Adoptions and Maintenance Act, 1956 provides for grant of maintenance to a legally wedded Hindu wife, and also deals with rules for adoption. The Hindu Marriage Act, 1955 refers to the provisions dealing with solemnization of marriage also deals with the provisions for divorce. For the first time, through, the DV Act, the Parliament has recognized a “relationship in the nature of marriage” and not a live-in relationship simplicitor.”

10. Therefore, on the basis of this observation it can be said that the relationship other than marriage which is in the nature of marriage is recognized by the Protection of Women from Domestic Violence Act, but the live-in-relationship simplicitor is exception to the Protection of Women from Domestic Violence Act. It has been further discussed in the judgment that a continuous cohabitation of man and woman as husband and wife may raise the presumption of marriage, but the presumption which may be drawn from long cohabitation is a rebuttable one and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them and any adulterous relationship that is having voluntary sexual intercourse between a married person who is not one's husband or wife, cannot be said to be a relationship in the nature of marriage. Therefore, all the live-in-relationship are not relationship in the nature of marriage. Therefore, in this case the status of the respondent No.1 has to be considered accordingly.
11. There is clear finding of the Family Court itself that there is no existence of marriage relationship between the petitioner and the respondent No.1. It is well settled that for the purpose of Section 125 of Cr.P.C. wife means only legitimate wife or legally married wife, which has been reiterated by the Supreme Court in ***Savitaben Somabhai Bhatiya Vs. State of Gujarat And Ors***, reported in **2005 (3) SCC 636** that a woman not lawfully married is not entitled for maintenance under Section 125 of Cr.P.C.

12. Live-in-relationship of the petitioner with respondent No.1 was in nature of marriage or not is again need not be considered in the petition under Section 125 of Cr.P.C. This ground can be raised under the provision of Protection of Women from Domestic Violence Act and in case it is proved that the relationship was in the nature of marriage, then that may be a ground for entitlement of respondent No.1 that too under the provisions of Protection of Women from Domestic Violence Act.
13. Therefore, after discussion as made herein above, I am of this opinion that the order granting maintenance passed by the Family Court below is erroneous and not legally sustainable. Hence, this petition is allowed and the impugned order dated 18.02.2019, passed in M.J.C. No.62/2018, by the Family Court, Korba, is set-aside.

Sd/-
(Rajendra Chandra Singh Samant)
Judge