

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 117 of 2006

Order reserved on 08.01.2019

Order pronounced on 30.01.2019

Laxman Sahu S/o Banau Ram Sahu, aged about 29 years,
Residence of Shivanagar Mathpuraina Ring Road, Opposite
of Bakra Market Raipur, District Raipur, CG.

---- Applicant

Versus

1. Smt. Chudamani, W/o unknown (Wrongly mention as Luxman Sahu) aged about 26 years.
2. Umika, Minor through Natural Guardian Mother Chudamani Sahu aged 11 years, Resident of Shivanagar, Mathpuraina, Ring Road, Opposite of Bakra Market Raipur, District Raipur, CG.

---- Respondents

For Applicant	: Smt. Indira Tripathi, Advocate
For Respondent	: Ms. Pragya Pandey, Advocate

Hon'ble Smt. Justice Vimla Singh Kapoor

C.A.V Order

Respondent No. 1 claiming herself to be the wife of the applicant and the respondent No. 2 as their daughter filed an application under Section 125 of the Code of Criminal Procedure for grant of maintenance. She has pleaded that the applicant married her under the locally prevailing tradition known as "*Chudi Pratha*" and out of their physical relations respondent No. 2 Umika was born. She also pleaded that for some time the applicant treated her well but with the passage of time he started showing apathy and started ill-treating her. She has also prayed that since there is no source of income to maintain herself and the minor daughter born through the applicant, suitable

maintenance may be awarded to her. According to respondent No.1, the applicant being an agent of the insurance company has the monthly income of Rs. 10,000/- and thereby he is in a position to maintain them. Applicant however has repudiated the entire claim made by the respondents for grant of maintenance and stated that as there was no marriage between the two nor the respondent No. 2 was born out of their relationship, question of maintenance being sought by them does not arise.

2. Having considered the material on record, learned Court below granted maintenance of Rs. 300/- per month in favour of the respondents herein each. It is that order which is under challenge in this revision petition.

3. Counsel for the applicant submits that since there was no marriage between the applicant and respondent No.1, the applicant cannot be held liable to pay maintenance to the respondents herein who are claiming themselves to be his wife and daughter. He submits that entirely a concocted story has been painted by the respondent No.1 just to grab some amount from him otherwise there is no material in support of their version.

4. Counsel for the respondents however, supports the judgment impugned and submits that as the applicant had married respondent No.1 through a local prevailing tradition he is duty bound to maintain her as also respondent No.2 who was born out of their relationship.

5. Heard counsel for the parties and perused the material on record.

6. This Court could not lay its hands even on a single document to show that respondent No.1 ever married the applicant. Had it been so and the applicant and respondent No.1 were really the husband and wife, what was the reason for respondent No.1 to lodge the report against the applicant for the offence punishable under Section 376 IPC. This only shows that the applicant and the respondent No.1 were just acquainted to each other and they were not the husband and wife as pleaded by her, and being so her plea for maintenance from the applicant has no legs to stand. However, the possibility of respondent No.2 being born through their relationship even in the absence of marriage cannot be ruled out for the reason that it has come in the evidence of the witnesses that the applicant and respondent No.1 used to live together for years together. All this apart, the evidence shows that respondent No.1 was earlier married to one Yadunath Chouhan, resident of Dangania Raipur, which never came to be dissolved by a decree of divorce and therefore also during the existence of first marriage the applicant could not have married her even otherwise. For this reason also, the plea of her marriage with the applicant does not have any force.

7. In aforesaid view of the matter the order impugned granting maintenance to respondent No.1 Smt. Chudamani is hereby set aside because the marriage itself has not been proved between the applicant and respondent No.1. As for as respondent No.2, Umika is concerned, even assuming that she was born through the illicit relationship between the applicant and respondent No.1, and as such was his illegitimate child, she cannot be allowed to wander here and there in search of livelihood and honorable living. That way also the applicant has to maintain her and therefore, the order impugned granting maintenance to her is

hereby maintained. In other words, the applicant has to pay maintenance as awarded by the Court below to respondent No.2 but not to respondent No.1.

8. Revision is thus partly allowed.

Sd/-

(Vimla Singh Kapoor)

Judge

Jyotishi/Pawan