

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 12.9.2019****Order delivered on 10.12.2019****CRR No. 630 of 2019**

- Laxmi Prasad Vishwakarma S/o Late Manuram Vishwakarma Aged About 60 Years R/o Aman Nagar, Behind Ashoka Hights, Mowa, Police Station - Mowa, Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

---- Applicant**Versus**

1. Smt. Shakuntala Singh Vishwakarma Aged About 46 Years
2. Ku. Kamna Vishwakarma Aged About - 16 Years(Now 19 Years)
3. Ku. Chitrarekha Vishwakarma Aged About 10 Years, Minor through her natural guardian and mother Smt. Shakuntala Vishwakarma

All are R/o Sonkar Baudi, Near Yogesh Jwellers Kushalpur, Raipur District Raipur Chhattisgarh., District : Raipur, Chhattisgarh

----Respondents

For Applicant	: Shri Rajesh Kumar Kesharwani, Advocate
For Respondents	: Shri Vipin Punjabi, Advocate

Hon'ble Smt. Justice Rajani Dubey**CAV Order**

1. Heard on admission.
2. This revision is directed against the order dated 8.4.2019 passed by the 1st Additional Principal Judge, Family Court Raipur (CG) in Case No.678/2017, whereby the Judge Family Court has partly allowed the application filed by the respondents/applicants under Section 125 Cr.P.C. and granted interim maintenance of Rs.4000/- in favour of respondent No.1 and Rs.3000/- in favour of respondent No.3- Chitrarekha (daughter), total Rs.7000/- per month.

3. Brief facts of the case are that before the Family Court the respondents filed an application under Section 125 Cr.P.C. claiming maintenance of Rs.50,000/- per month to them against the applicant/ husband on the ground that they are wife and daughters of the applicant, living separately and unable to maintain themselves. The applicant has retired from Sales Tax Department and he is getting sufficient amount by way of pension.
4. In reply, the applicant denied all the allegations levelled against him and pleaded that respondent No.1 is not his legally wedded wife, and he is not biological father of respondents 2 and 3, therefore, they are not entitled for any maintenance.
5. The Family Court after hearing counsel for both the parties and going through the evidence, passed the order of interim maintenance and granted Rs.4000/- to respondent No.1 and Rs.3000/- to respondent No.3, Chitrarekha, total Rs.7000/- per month, and on the basis of DNA test report, denied interim maintenance to respondent No.2. Hence, this revision has been filed by the applicant for setting aside the order.
6. Learned counsel for the applicant submitted that respondent No.1 is not legally wedded wife of the applicant and respondent No.2 and 3 are not his daughters, therefore, they are not entitled for any maintenance. He placed reliance on the judgment of this Court passed in **CRR No.60/2012 on 14.2.2014** in the matter of **Sukanya Vs. Balak Ram, 2014 LawSuit(Chh)167**.

7. On the other hand, learned counsel for the respondents supported the impugned order. He submitted that respondent No.1 was married to the applicant on 3.12.1998 and out of their wedlock respondents 2 and 3 have born. Thereafter, the applicant started treating respondent No.1 with cruelty and ousted her from house due to which she is residing separately along with her daughters (respondents 2 and 3). He placed reliance on **2013 (4) CCSC 1905 (SC), Badshah Vs. Sou. Urmila Badshah Godse and another** and **2012 CRI.L.J.660, Pyla Mutyalamma alias Satyavathi V. Pyla Suri Demudu & Anr.**
8. I have heard learned counsel for the parties and perused the record.
9. For grant of interim maintenance, the Court has to see prima-facie relationship between the parties and earning capacity of the husband. It is confirmed by the DNA test that the applicant is not biological father of respondent No.2, Kamna and he is biological father of respondent No.3-Chitrarekha, therefore, the Family Court has granted interim maintenance of Rs.3000/- per month only to respondent No.3-Chitrarekha. As regards legal relations between the parties, it is clear from the DNA test that the applicant is not biological father of respondent No.2- Kamna. The Family Court has rightly rejected the claim of respondent No.2 and this Court do not find any illegality so far as it relates to respondent No.2.

10. The next question which arises for consideration is as to whether the respondent No.1 is legally wedded wife of the applicant.
11. In the matter of **Sukanya** (supra) passed by this Court in CRR No.60/2012, it is clearly held that “Where a person knowingly enters into a live-in-relationship with other knowing that he was married person the generic proposition that where a man and a woman are proved to have lived together as husband and wife, the law presumes that they are living together in consequence of a valid marriage will not apply and, hence, the relationship between them would not be a relationship in the nature of a marriage, and the status of the lady would be of a concubine”.
12. In the instant case, it has been prima facie established by the DNA test that the applicant is not biological father of respondent No.2, and the Family Court relying on the same has rejected the application in respect of respondent No.2 and it has come on record that the applicant has already a married person and he has a son and names of his wife and son are also recorded in the nominee paper(nomination for death-cum-retirement gratuity) of the applicant. The order sheet dated 10.10.2018 of the Family Court also reveals that an affidavit has been filed by the brother of respondent No.1 stating therein that his sister (respondent No.1) was married to one Mahesh Singh Thakur. Thus, in view of aforesaid and in view of order of this Court in the matter of **Sukanya** (supra), it is clear that, though, respondent No.1 was in relation with the applicant, but not in the manner of his wife as

both were knowing the fact that they are married and their respective spouses are still alive. No doubt, the status of the lady would be of a concubine. Therefore, it is prima facie established that respondent No.1 is not legally wedded wife of the applicant and, hence, she is not entitled for interim maintenance under Section 125 Cr.P.C.

13. As this Court has already discussed herein above prima facie that respondent No.1 is not legally wedded wife of the applicant and respondent No.2 is not the daughter of applicant, therefore, the order of the Family Court granting interim maintenance to respondent No.1(wife) is set aside. However, the order of the trial Court in respect of respondent No.3 granting maintenance of Rs.3,000/- per month is hereby maintained.
14. Accordingly, the revision is partly allowed to the extent indicated herein above.
15. With the above observation, the revision stands disposed of at the admission stage itself.

Sd/

(Rajani Dubey)

JUDGE