

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 05.8.2019****Order delivered on 4.10.2019****CRR No. 710 of 2014**

- Shri Lakhan Lal Shrivastav S/o Punalal Shrivastav Aged About 64 Years R/o Forest Division Office, Khairagarh, Forest Department, Distt. Rajnandgaon C.G. Present R/o Parevadih, Ps And Tah. And Distt. Rajnandgaon C.G. (As mentioned in order) Now R/o Civil Line, Khairagarh Post And Tah. - Khairagarh, Distt. Rajnandgaon C.G., Chhattisgarh

---- Applicant**Versus**

- Smt. Sonkuwar Bai W/o Shri Lakhan Lal Shrivastav Aged About 54 Years R/o Parevadih, Ps, Tah. And Distt. Rajnandgaon C.G. Present R/o Village And Post Jamgaon, Ps Narharpur, Civil And Rev. Distt. Kanker C.G. , Chhattisgarh

----Respondent

For Applicant	: Shri K.A. Ansari, Sr. Advocate with Smt. Meera Ansari, Advocate
For Respondent	: Shri Anil Gulati, Advocate

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

1. This revision is directed against the order dated 30.8.2014, passed by the Judge, Family Court, Kanker, District North Baster Kanker(CG) in Misc. Cr. Case No. 61/2013, whereby the Judge Family Court has granted maintenance of Rs.2600/- per month to the respondent on her application filed under Section 125 Cr.P.C.
2. The respondent/wife filed and application under Section 125 Cr.P.C. before the Family Court for grant of maintenance stating that after 20 years of love affairs between her and the applicant, their marriage was solemnized as per social customs and rituals

in a Meeting of village people and they were living as husband and wife in village Jamgaon. Out of their wedlock, one son was born, who died immediately after birth. After 1½ years, one daughter was born, who died after 2 days of her birth. Thereafter, one daughter namely Rambha was born, who survived for 7 years and she also died due to Chicken Pox. Due to death of all the children, the applicant proposed second marriage and he assured the respondent to keep her in the same way and on account of pressure by the in-laws, the respondent gave her consent for second marriage of the husband/applicant with Sarla Bai. Thereafter, the applicant lived with the respondent and another wife Sarla Bai at village Manikpur and Korgaon for 4 years. During this period, the applicant had 2 issues from the second wife. After some time, the husband deserted the respondent and started living with the second wife and both children at village Balaghat. He stopped taking care of the respondent and neglected to maintain her. The respondent being 50 years old lady unable to maintain herself as she has no source of income, therefore, she filed application under Section 125 Cr.P.C. demanding maintenance of Rs.5000/- per month from the applicant/husband.

3. Denying the allegations, the applicant pleaded that he never married to the respondent and she is wife of Vikas Kalar and living with him at village Jamgaon. He also denied that he had relations for 20 years with the respondent and consequently married and any child was born out of his wedlock with the

respondent and he lived with her at village Jamgaon. He denied that the respondent had ever lived with him. All the adverse allegations were denied by him. The applicant has retired on 31.7.2010 on attaining the age of superannuation.

4. The learned Family Court after recording evidence of both the parties, allowed the application and granted monthly maintenance of Rs.2600/- per month to the respondent as mentioned in para 1 of this order. Hence, this revision has been filed by the applicant for setting aside the order.
5. Learned counsel for the applicant submitted that the order passed by the Family Court is arbitrary and contrary to law and the facts and same is liable to be set aside. The respondent alleged that she was married to the applicant in the year 1970 and the applicant has married to Sarla Bai in the year 1979. This material fact would have been sufficient to throw the respondent out of the court because only valid marriage can give entitlement of award of maintenance in the summary proceedings of Section 125 Cr.P.C. He further submitted that the witness Indal Ram has admitted in cross examination that the marriage of the respondent was performed with Vikas Kalar, a resident of Jamgaon and learned Family Court has not taken into consideration the reply given by the respondent to the questions asked by the Court itself. He placed reliance on **Chanmuniya Vs. Virendra Kumar Singh Kushwaha and Another, (2011) 1 SCC 141.**

6. Learned counsel for the respondent supported the impugned order and submitted that the order passed by the Family Court is just and proper and requires no interference by this Court.
7. I have heard learned counsel for the parties and perused the record.
8. The Family Court on appreciation of oral and documentary evidence found that in Pariwar Rojgar Card, name of the applicant has been as husband of the respondent. The applicant alleged that the respondent has married to another person namely-Vikas Kalar, therefore, the burden of proof lies on the applicant and he has to prove that prior to their marriage, the respondent was married to some other person. The applicant also did not file any documentary evidence regarding this fact and in his cross examination on the suggestion given by the Family Court about Vikas Kalar, he stated that in muster roll in front of respondent's, name wife of Vikas Kalar was written. He stated that it is true that he did not file any document regarding this submission and also not filed the copy of muster roll. After going through the evidence, the Family Court arrived at a finding that the applicant and respondent were known as husband and wife for a long time and awarded maintenance of Rs.2600/- per month in favour of the respondent.
9. The Hon'ble Apex Court in the matter of **Chanmuniya** (Supra) has held in para 8, 9 and 10 as under:

“8. On the question of presumption of marriage, we may usefully refer to a decision of the House of Lords rendered in *Piers v. Piers*¹, in which Their Lordships observed that the question of validity of marriage cannot be tried like any other issue of fact independent of presumption. The Court held that law will presume in favour of marriage and such presumption could only be rebutted by strong and satisfactory evidence.

9. In *Lt.C.W. Campbell v. John A.G. Campbell*², also known as the *Breadalbane* case, the House of Lords held that cohabitation, with the required repute, as husband and wife, was proof that the parties between themselves had mutually contracted the matrimonial relation. A relationship which may be adulterous at the beginning may become matrimonial by consent. This may be evidenced by habit and repute.

10. In the instant case both the appellant and the first respondent were related and lived in the same house and by a social custom were treated as husband and wife. Their marriage was solemnised with katha and sindur. Therefore, following the ratio of the decisions of the House of Lords, this Court thinks that there is a very strong presumption in favour of marriage. The House of Lords again observed in *De Thoren v. Attorney General*³ that the presumption of marriage is much stronger than a presumption in regard to other facts.”

10. After going through the evidence and the material on record, I am of the view that the Family court has rightly held that the respondent is wife of the applicant and granted maintenance of

¹ (1849)2 HL Cas 331 : (1843-60) All ER Rep 159; 9 ER 1118

² (1867) LR 2 HL 269

³ (1876)1 AC 686 (HL)

Rs.2600/- per month in favour of the respondent. As regards quantum of maintenance is concerned, it cannot be said to be disproportionate or unreasonable looking to the present price index. The applicant has retired from the service and receiving pension of Rs.13000/- per month, thus, he has regular income to pay the amount of Rs.2600/- to the destitute wife. The order passed by the Family Court does not suffer any irregularity or illegality and the same is not liable to be interfered with. The revision has no merits and the same is dismissed.

- 11.** Consequently, I.A.No.1 for grant of interim relief is also dismissed.

Sd/

(Rajani Dubey)

JUDGE