

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 725 of 2019

- Kanhaiya Tandan, S/o Late Reshamlal Tandan, Aged About 45 Years, Caste-Satnami, R/o Sonadah, Tahsil-Champa, Presently Resided At Godma, Tahsil Korba, P.S. Ompur (Rajgamar), District- Korba, Chhattisgarh.

---- Applicant

Versus

- Smt. Lachhanbai, W/o Kanhiya Tandan, Aged About 29 Years, Caste Satnami, R/o Village-Sonadah, Tahsil-Champa, District-Janjgir-Champa, Presently Resided At Kera, Tahsil-Navagarh, District- Janjgir-Champa, Chhattisgarh.

---- Respondent

For Applicant	:	Mr. Utkal Pradhan, Advocate.
For Respondent	:	Mr. Shobhit Mishra, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

16/10/2019

1. The petition has been brought challenging the order dated 1.5.2019 passed by Judge, Family Court, Janjgir-Champa in Miscellaneous J.Case No.230/2017 directing the petitioner to make payment of monthly maintenance of Rs.5,000/- to the respondent along with cost of the litigation.
2. It is submitted that the learned judge of Family Court has not given consideration to this fact that the respondent is not legally wedded wife for the reason that she is already married and her husband is alive. Another ground raised is that the respondent was living in adultery

along with one Bandhan Rathiya regarding which evidence was adduced but the same has not been appreciated in proper manner. Therefore, the respondent is not entitled to get maintenance as per provision of Section 125(4) of CrPC. In these circumstances, the impugned order passed by the Court below is arbitrary and without merits and the same deserves to be set aside.

3. Learned counsel for respondent submits that the Family Court has very clearly held that the petitioner/non-applicant has failed to prove that the respondent was earlier married to some person. Replying to second ground raised in this petition, it is submitted that in the reply filed by petitioner to application filed under Section 125 of CrPC it has nowhere been mentioned that the respondent was having illicit relation with any person or she was living in adultery, therefore, in absence of pleading, the evidence so produced could not have been appreciated and therefore non-appreciation of this evidence by the Court below does not have any effect on the order passed. Hence, this petition is not maintainable.
4. I have heard both the parties and perused the documents on record.
5. The petitioner had admitted in his reply to the application under Section 125 of CrPC that he had married the respondent according to '*chudi*' custom, therefore, there is no dispute regarding this marriage. It was pleaded by the petitioner that the respondent was already married and her husband was also alive. In such a situation, the marriage performed by respondent with the petitioner, without taking divorce from her husband, was illegal. However, the fact that respondent was living in adultery has neither been pleaded nor ground to this effect has been raised by petitioner in his reply.
6. The respondent has made statement regarding her marriage with the petitioner in her examination-in-chief whereas she has very clearly denied that earlier she was married to one Basant. Jagatram, father of the petitioner, has similarly stated about the marriage in his examination-in-chief and in cross-examination he has also denied that

the respondent was earlier married to one Basant.

7. Petitioner Kanhaiya Tandon has stated in his examination-in-chief that the respondent was earlier married to one Basant and without taking divorce from him, she has illegally married the petitioner. In cross-examination, he has admitted that he has not produced any documentary evidence regarding earlier marriage of respondent. Similar statement regarding earlier marriage of respondent has been made by Yadram Mahilange, witness for non-applicant, by stating that when he visited the house of petitioner to meet him, at that time respondent and her first husband Basant were present in the house. However, in cross-examination he has admitted that he is resident of different village and he had never been to the house of the petitioner. Therefore, the statement made by said Yadram Mahilange in examination-in-chief appears to be without any basis.
8. Oral statement made by the applicant's side denying suggestion of earlier marriage by the petitioner side and similarly there is oral statement made by the petitioner/non-applicant in his statement create a circumstance to show that there is no preponderance of probability created and found in favor of the petitioner to hold it as a fact that the respondent was already married when she performed marriage with the petitioner. Therefore, no perversity is found in the finding of the Family Court that the marriage between petitioner and respondent was proved and that it was a lawful marriage.
9. The petitioner/non-applicant has made no pleading in his reply to the application under Section 125 of CrPC that the respondent was living in adultery, however, he has made a statement at the stage of evidence that he saw the respondent in association with one Bandhan. Other witness examined to support the statement of Dhruapati Rathiya, has stated that she has seen respondent traveling in motorcycle with one Bandhan on number of occasions and she had also seen them sitting under a tree. Another witness Brijlal has stated that on one occasion he went to visit petitioner/non-applicant and there he saw his wife lying on a cot with a man named Bandhan Rathiya.

10. The proceeding under Section 125 of CrPC is although titled as 'criminal proceedings' but infact it is a quasi-civil proceedings, therefore, in such a cases the principles of civil trial are normally followed. For the reason that the provision under Section 125 of CrPC is though a criminal provision, but it is a substantive provision for providing relief to destitute and deserted wives. Therefore, according to the principles of civil trial, any evidence brought beyond the pleadings made cannot be taken into consideration by the Court concerned. Hence, non-consideration on this evidence by the Family Court below cannot be regarded as any irregularity or illegality.

11. After over all consideration, I am of this opinion that this petition is without any substance which is liable to be dismissed and it is accordingly dismissed at the motion stage itself.

Sd/-

(Rajendra Chandra Singh Samant)
Judge