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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.248 of 2013

Order Reserved on : 7.1.2019

Order Passed on : 19.3.2019

1. Mugiya Bai, wife of Aatmaram Sahu, aged about 40 years,
2. Tuman Lal, son of Aatmaram Sahu, aged about 6 years, minor through legal guardian mother Mugiya Bai, wife of Aatmaram Sahu,

Both are residents of Village Bagur, Police Station Gandai, Tahsil Chhuikhadan, District Rajnandgaon, Chhattisgarh

---- Applicants

versus

Aatmaram Sahu, son of Manrakhan Sahu, aged about 45 years, resident of Village Dongariya, Police Station and Tahsil Sahaspur Lohara, District Rajnandgaon, Chhattisgarh

--- Respondent

For Applicants	:	Shri Bharat Rajput, Advocate
For Respondent	:	Shri Amit Kumar Sahu, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. This revision has been preferred against the order dated 11.1.2013 passed by the Link Court, Khairagarh of Family Court, Rajnandgaon in M.Cr.C. No.53 of 2012, whereby the application under Section 125 of the Code of Criminal Procedure moved by the present Applicants has been dismissed.
2. Facts of the case, in brief, are that the present Applicants filed an application under Section 125 of the Code of Criminal Procedure before the Family Court. It was pleaded by them that Applicant No.1 is wedded wife of the Respondent and out of their wedlock two daughters and one son i.e. Applicant No.2 took birth. In the

month of February, 2006, when Applicant No.1 was carrying pregnancy of two months, the Respondent expelled her out of his house and, therefore, she came to her paternal house. Since then she is residing at her paternal house. Applicant No.2 was born at her paternal house, but, despite inviting the Respondent, he did not come in the birth ceremony of Applicant No.2. It was further pleaded that the Respondent has kept one Santoshi Bai as his second wife. The Applicants are unable to maintain themselves and the Respondent has sufficient means to maintain them.

3. The Respondent, in his reply, denied the allegations made against him. It was pleaded by him that he performed marriage with Applicant No.1 as per customs 16 years before. Out of their wedlock, only two daughters, namely, Gangabai and Mukeshwaribai took birth, who are residing with him. It was further pleaded by him that before 8 years, Applicant No.1, leaving both the daughters, ran away from his house without any reason. Thereafter, she performed marriage with one Hariram, a resident of Village Belgaon. After residing with Hariram for few days, she again ran away. It was further pleaded that after 1½ years she returned with Applicant No.2, who was aged about 2½ months. A village meeting was called by him in which she could not lead any evidence to show that Applicant No.2 is his child. It was further pleaded by him that after filing of the application under Section 125 of the Code of Criminal Procedure, on 27.6.2012, a meeting of Sahu community was convened at Village Bagur. In the said meeting, Applicant No.1 admitted the fact that one Sahdeo, a resident of Village Biranpur Khurd is father of Applicant No.2. It was pleaded that since Applicant No.1 is leading adulterous life,

she is not entitled to get any maintenance from him. Applicant No.2 is not his legitimate/illegitimate child, therefore, he is also not entitled to get any maintenance from him. Before the Family Court, both the parties adduced their evidence and also submitted certain documents. Applicant No.1 examined herself as Applicant Witness No.1 and also examined her father Mahangu as Applicant witness No.2. She also examined other witnesses Hira as Applicant Witness No.3 and Mohan as Applicant Witness No.4. The Respondent examined himself as Respondent Witness No.1. He also examined Sagunram as Respondent Witness No.2 and Hariram as Respondent Witness No.3. After recording of evidence of both the parties and hearing arguments, the Family Court rejected the application under Section 125 of the Code of Criminal Procedure on the ground that since Applicant No.1 is leading an adulterous life, she is not entitled to get any maintenance and also on the ground that Applicant No.2 is not a legitimate/illegitimate child of the Respondent and, therefore, he is also not entitled to get any maintenance. Hence, the instant revision has been filed by the Applicants.

4. Learned Counsel appearing for the Applicants submitted that the Family Court has failed to appreciate that the Respondent had cohabited with Applicant No.1 for a long period of 16 years and thereafter he expelled her out of his house. It was further submitted that the Family Court has also failed to appreciate that the Respondent has kept one Santoshi Bai as his wife, therefore, Applicant No.1 has sufficient cause to reside separately from the Respondent. Only on the basis of surmises, without there being any evidence on record, the Family Court has wrongly arrived at

the conclusion that Applicant No.2 is not born from the wedlock of Applicant No.1 with the Respondent. Therefore, both the Applicants are entitled to get maintenance from the Respondent.

5. Learned Counsel appearing for the Respondent supported the impugned order passed by the Family Court.
6. I have heard Learned Counsel appearing for the parties and perused the record minutely.
7. It is not in dispute that before 16 years from filing of the application under Section 125 of the Code of Criminal Procedure, marriage of Applicant No.1 was solemnised with the Respondent according to their customs. It is also not in dispute that out of their wedlock two daughters Gangabai and Mukeshwaribai took birth, who are presently residing with the Respondent.
8. It has been deposed by Applicant No.1, Mugiya Bai that when she was carrying pregnancy for two months, the Respondent expelled her out of his house after beating her. Thereafter, on 18.10.2006, birth of Applicant No.2 took place in her village. The Respondent has denied this fact and deposed that after 1½ years of her running away from his house, she returned to his house with Applicant No.2 aged about 2½ months. A village meeting took place in which she could not adduce any evidence to show that the Respondent is father of Applicant No.2. He has further deposed that after filing of the application under Section 125 of the Code of Criminal Procedure, a village meeting had taken place in Village Bagur in which she admitted the fact that father of Applicant No.2 is Sahdeo. Though Applicant No.1 denied the suggestion made before her that Applicant No.2 took birth after 1½ years of her leaving the house of

the Respondent, her father Applicant Witness No.2, Mahangu, in his cross-examination, has categorically admitted the fact that Applicant No.1 had returned to the house of the Respondent after 1½ years of her leaving his house and at that time age of Applicant No.2 was 2½ months. This witness has also admitted the fact that in Village Bagur a village meeting was called for. Applicant Witness No.3, Hira, in paragraph 5 of his cross-examination, has also admitted that after 1½ years of her leaving the house of the Respondent she returned to his house with Applicant No.2. The Respondent has examined Sagunram as Respondent Witness No.2, who is the patron of Chhuikhadan Sahu Sangh. Sagunram has deposed that in Village Bagur a meeting of Sahu community had taken place in which on being asked Applicant No.1 had admitted that father of Applicant No.2 is Sahdeo, a resident of Village Biranpur Khurd. The above statement of witness Sagunram is also not duly rebutted by Applicant No.1. Apart from this, the Respondent has also examined Hariram, a resident of Village Belgaon. Hariram has deposed that Applicant No.1, after leaving the Respondent, resided at the house of her grandmother (*Nani*) for about 9-10 months. This witness has further deposed that thereafter he married Applicant No.1 vide churi form and at that time she stayed at his house for about 2 days. At that time, she appeared to be pregnant. On being asked by him, she told that the pregnancy was from her *Jija* (brother-in-law). A social meeting was called in which he was fined with a sum of Rs.551/-. He has further deposed that thereafter in the next morning, she again went to the house of her grandmother. The above statement of witness Hariram has also not been rebutted by Applicant No.1.

9. From the above, it is clear that though Applicant No.1 and the Respondent performed marriage before 16 years of filing of the application under Section 125 of the Code of Criminal Procedure, from the evidence available on record it is clear that Applicant No.1 left the house of the Respondent and she returned to his house 1½ years thereafter and at that time Applicant No.2 was with her whose age was 2½ months. During the aforesaid period of 1½ years from leaving the house of the Respondent by Applicant No.1 till her return to his house, there was cohabitation between the Respondent and Applicant No.1, no evidence is available on record to this effect nor has any statement been given by Applicant No.1 to this effect. From the unrebutted statement of the Respondent's witness Hariram, it is also clear that after 9-10 months of staying away from the Respondent, Applicant No.1 performed marriage with Hariram vide churi form. From the unrebutted statement of Respondent's another witness Sagunram, it is established that in Village Bagur a meeting had taken place in which Applicant No.1 had taken the name of father of Applicant No.2 as Sahdeo. From the above evidence available on record, it is clear that after her leaving the house of the Respondent, Applicant No.1 led an adulterous life. It is also established that Applicant No.1 after 1½ years of leaving the house of the Respondent, returned to his house and at the time of her return Applicant No.2 was with her who was at that time aged about 2½ months and there is no evidence available on record to show that there was any cohabitation between the Respondent and Applicant No.1 during the said period of 1½ years. Therefore, it is established that Applicant No.2 is neither a legitimate nor an illegitimate child of the Respondent. On the basis of the evidence on record, I find that

there is no infirmity in the conclusion arrived at by the Family Court and, therefore, the rejection of the application under Section 125 of the Code of Criminal Procedure moved by the Applicants is just and proper.

10. Consequently, the instant revision is dismissed.
11. Record of the Court below be sent back along with a copy of this order forthwith for information and necessary compliance.

Sd/-

(Arvind Singh Chandel)
JUDGE