

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr. M. P. No. 529 of 2015**

Dilip Kumar, S/o Natthu Bhuihar, aged about 21 years, (at present 30 years), R/o Village Junadih, Post & P.S. Lailunga, District Raigarh (C.G.)

----Petitioner

Versus

1. Dilwati @ Raiwati W/o not known to the petitioner, aged about 39 years,
 2. Minor Munni Bai, D/o Dilwati @ Raiwati, aged about 9 years,
- Both resident of village Junadih, P.S. Lailunga, District Raigarh (C.G.)

---- Respondents

For Petitioner : Shri K.N. Nande, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

30/04/2019

(1) Respondents No. 1 & 2 herein claiming to be the wife and daughter of the petitioner herein filed an application for maintenance under Section 125 of the Code of Criminal Procedure (henceforth "Cr.P.C.") stating *inter alia* that they, being the wife & daughter of the petitioner herein, are entitled to maintenance from him, in which, the petitioner has denied the fact of marriage with respondent No. 1 and further stated that respondent No. 2 is not his daughter out of alleged wedlock with respondent No. 1.

(2) The Judicial Magistrate, First Class, Gharghoda, by its order dated 17.01.2014 held that no marriage has taken place between the petitioner and respondent No. 1 and, therefore, respondent No. 1 is not entitled for maintenance;

and further held that respondent No. 2 was born out of cohabitation of petitioner with respondent No. 1, therefore, she, being an illegitimate daughter of petitioner, would be entitled for maintenance to the extent of Rs. 800/- per month, and that has been upheld by the revisional court, against which instant petition under Section 482 of the Code of Criminal Procedure has been preferred.

(3) Learned counsel appearing for the petitioner would submit that both the courts below are absolutely unjustified in granting maintenance in favour of respondent No. 2 after having held that no marriage took place between petitioner and respondent No. 1 and, as such, order granting maintenance and the impugned order affirming the order of trial Magistrate deserve to be set aside.

(4) I have heard learned counsel appearing for the petitioner and considered his submissions and went through the record with utmost circumspection.

(5) At this stage, it would be appropriate to notice Section 125 (1)(b) of the Code of Criminal Procedure, which reads thus :-

“S.125. (1) If any person having sufficient means neglects or refuses to maintain-

(a) xxx xxx xxx

**(b) his legitimate or illegitimate minor child,
whether married or not, unable to maintain itself,
or**

(c) xxx xxx xxx

(d) xxx xxx xxx

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate may from time to time direct :

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.”

(6) Thus, by virtue of the provisions contained in Section 125 (1)(b), illegitimate minor child, who is unable to maintain himself is entitled for maintenance from his father having sufficient means, if he neglects or refuse to maintain.

(7) The Supreme Court in the matter of **Sumitra Devi Vs. Bhikan Choudhary**¹ has clearly held that even an illegitimate minor child would be entitled for maintenance under Section 125 of the Cr.P.C. and observed as under:-

“4. Now that the matter is going back to the original Court we think it appropriate to bring it to the notice of the learned Magistrate that under Section 125 of the Code of Criminal Procedure even an illegitimate minor child is entitled to maintenance. Even if the fact of marriage is discarded, the minor child being found to be an illegitimate daughter of the respondent would be entitled to maintenance. Our saying so may not be construed as a conclusion against the factum of marriage or as a suggestion that the child is not legitimate. We have no intention to say either way.”

(7) Reverting to the facts of the present case in light of provisions contained in Section 125(1)(b) of the Cr.P.C. and the principles of law laid down by the Supreme Court in Sumitra Devi (supra),, it is quite vivid that in the instant case, fact of marriage of petitioner and respondent No. 1 is not found proved by both the courts below but both the courts below have held that respondent No. 2 is an

1 (1985) 1 SCC 637

illegitimate child of petitioner and respondent No. 1, as such, respondent No. 2 – Minor Munni Bai being an illegitimate child would be entitled for maintenance and the finding recorded by both the courts below that respondent No. 2 being the illegitimate minor child of petitioner and respondent No. 1, is entitled to maintenance to the extent of Rs. 800/- per month is a finding of fact based on evidence available on record, which is neither perverse nor contrary to the record and the same is not liable to be interfered with in the jurisdiction under Section 482 of the Code of Criminal Procedure.

(8) Accordingly, the petition under Section 482 of the Cr.P.C., being devoid of merit, is liable to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

HIGH COURT OF CHHATTISGARH AT BILASPUR

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Dilip Kumar

Vs.

Dilwati @ Raiwati & another.

Head Note

English

Illegitimate minor child is entitled for maintenance from his father.

Hindi

अधर्मज अव्यस्क शिशु अपने पिता से भरण—पोषण प्राप्त करने का हकदार है ।

