

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 671 of 2014

Lakhan Lal Tandan, S/o. Chandaram Tandan, Aged About 48 Years, R/o. Village Bharatpur, Tah. Bhatapara, Civil And Rev. Distt. Baloda Bazar, C.G.
----- **Petitioner**

Versus

1. Aamruautin Bai, W/o Lakhan Lal Tandan Aged About 45 Years
2. Minor Ku. Sheetla, D/o Lankhan Lal Tandan, Aged About 15 Years

Both are R/o. Bharatpur, Tah. Bhatapara At Present R/o In Otgan Tah. And PS Bilha, Civil And Rev. Distt. Bilaspur C.G.
----- **Respondents**

For Petitioner : Mr. Viprasen Agrawal, Advocate

For Respondents : Mr. Anil Gulati, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

21.06.2019

1. Heard
2. In the present petition, the petitioner and Respondent No. 1 are husband and wife. They were married 30 years prior to the date of filing of application under Section 125 of the Cr.P.C. on 17.05.2012. Respondents No. 1 & 2, being wife and minor daughter, filed an application under Section 125 of the Cr.P.C. stating *inter alia* that the petitioner is not maintaining her and her minor daughter and used to beat her and he has left them for which she had registered a case in the month of June 1992, which was withdrawn on the assurance given by the petitioner vide Exhibit A-1 dated 22.06.1992. But, thereafter his behavior remained unchanged and he remarried one Mogra Bai during the subsistence of his marriage with Respondent No.1 by which she was

compelled to live separately along with her daughter in her parental home. As such, the fact of the petitioner having remarried Mogra Bai, constituted sufficient cause to live separately and, she and her daughter both are unable to maintain themselves and therefore they are entitled for maintenance from the petitioner, as they are having no source to earn their livelihood.

3. The petitioner herein has filed reply stating *inter alia* that respondent No. 1 has refused to live with him before the Sub-Divisional Magistrate in an application filed by him and consequently, the petitioner remarried Mogra Bai, as such respondents are not entitled for maintenance.
4. The learned Sub Divisional Magistrate after appreciating the oral and documentary evidence available on record by an order dated 18.07.2013, allowed the application holding that the petitioner has remarried Mogra Bai and that will constitute just and valid ground for his wife's refusal to live with him as per explanation attached to sub-section (3) of Section 125 of the Cr.P.C and the respondents, being unable to maintain themselves are entitled for compensation and granted maintenance to them a tune of Rs. 4,500/- & Rs.3,000/- respectively from the date of application dated 17.05.2012 which was challenged by the petitioner by filing revision in which he remained unsuccessful, then he has filed this petition under Section 482 of the Cr.P.C. questioning the order passed by the Revisional Court affirming the order granting maintenance.
5. Mr. Viprasen Agrawal, learned Counsel for the petitioner would submit that both the courts below are absolutely unjustified in granting maintenance holding that Respondent No. 1 is living separately with sufficient cause by recording perverse finding and is liable to be set-aside as Respondent No. 1 herself has refused to live with him. The

impugned order deserves to be set-aside.

6. I have heard learned counsel for the parties, considered the averments and submissions made herein above and gone through the record with circumspection.
7. It is not in dispute that Respondent No. 1 is the legally married wife of the petitioner and they were blessed with Respondent No. 2, daughter Ku. Sheetla. It is also not in dispute that on 22.06.1992 the petitioner executed an affidavit and took her to his house to live with him after settling his dispute with Respondent No. 1. But thereafter, in the month of July/ August 1992, the petitioner remarried Mogra Bai.
8. The question for consideration is whether Respondent No. 1 is living separately without just and valid ground and whether she is justified in refusing to live with the petitioner. Though the petitioner has stated in his reply that the petitioner had taken divorce with Respondent No. 1 in *Chhod Chhutti form* prevalent in their community and thereafter he remarried Mogra Bai, but in the evidence before the Court, he remained silent as to when he took divorce in the shape of Chhod-Chhutti . The learned Trial Magistrate after scanning the evidence on record has clearly reached to a finding that there is no evidence of divorce by Chhod-Chhutti that has already been taken place between the parties and negated the plea of divorce (Chhod-Chhutti) taken by the petitioner.
9. It is admitted position on record that the petitioner had remarried Mogra Bai in the month of July/ August 1992. The explanation appended to sub-section (3) of Section 125 of the Cr.P.C. clearly states that if the husband has contracted marriage with another woman, it shall be considered as a ground for wife's refusal to live with him. In the instant case, it is admitted position on record that the petitioner has contracted second marriage

with Mogra Bai and the Trial Court has rightly held that it is the just and valid ground for Respondent No. 1 to live separately and refused to live with the petitioner, that has been affirmed by the Revisional Court in the revision taken by the Petitioner. As such, the finding recorded by the two Courts below that the petitioner has remarried Mogra Bai and therefore, Respondent No. 1 is living separately with a valid and just ground, is a finding of fact based on the evidence available on the record. I do not find any perversity or illegality in the said finding.

10. Accordingly, the petition filed under Section 482 of the Cr.P.C. deserves to be, and is hereby dismissed.

Sd/-
(Sanjay K. Agrawal)
Judge