

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 665 of 2015**

1. Smt. Madhuri W/o Satyanarayan, aged about 34 years,
 2. Minor Vivek, aged about 07 years, S/o Satyanarayan Sharma,
 3. Minor Vishal, aged about 08 months S/o Satyanarayan Sharma,
- Applicant No. 2 & 3 are minor through the natural guardian mother applicant No. 1 Smt. Madhuri W/o Satyanarayan Sharma,
All R/o. Virendra Nagar, Ward No. 01, Nagar Panchayat Saraipali, Post, P.S. and Tahsil Saraipali, District Mahasamund (C.G.).

---- Applicants**Versus**

Satyanarayan Sharma S/o Jay Narayan Sharma, aged about 40 years
R/o Mahalpara Saraipali, Post, P.S. and Tahsil Saraipali, District Mahasamund (C.G.)

---- Respondent**AND****Criminal Revision No. 842 of 2015**

Satyanarayan Sharma S/o Jainarayan Sharma, aged about 40 years R/o Mahalpara Saraipali, Post and Tahsil Saraipali, P.S. Saraipali, Civil and Revenue District mahasamund (C.G.)

---- Applicant**Versus**

1. Smt. Madhuri W/o Satyanarayan, aged about 34 years, R/o. Virendra Nagar, Ward No. 01, Nagar Panchayat Saraipali, Post and P.S. Saraipali, Civil and Revenue District Mahasamund (C.G.).
2. Minor Vivek, aged about 07 years, S/o Satyanarayan Sharma, R/o. Virendra Nagar, Ward No. 01, Nagar Panchayat Saraipali, Post and P.S. Saraipali, Civil and Revenue District Mahasamund (C.G.).
3. Minor Vishal, aged about 08 months S/o Satyanarayan Sharma, R/o. Virendra Nagar, Ward No. 01, Nagar Panchayat Saraipali, Post and P.S. Saraipali, Civil and Revenue District Mahasamund (C.G.).

---- Respondents

For Applicants In CRR No. 665/2015	:	Mr. Shikhar Sharma, Advocate
For Applicant In CRR No. 842/2015	:	Mr. Manoj Paranjpe, Advocate
For Respondent In CRR No. 665/2015	:	Mr. Manoj Paranjpe, Advocate
For Respondent In CRR No. 842/2015	:	Mr. Shikhar Sharma, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

08/03/2019

1. Since both the revisions arise out of same order dated 10/07/2015 passed in MJC No. F-39/2015 by the Family Court, Mahasamund, Link Court of Saraipali, therefore, they are being disposed of by this common order.
2. Facts of the case are that the Applicants (in CRR No. 665/2015) had preferred an application under Section 125 Cr.P.C on the grounds that Applicant No. 1 and the Respondent was having love affairs and the Respondent had agreed to accept her as her wife. One affidavit in front of notary was also executed for this purpose. Thereafter, they started living together and Applicant No. 2 & 3 born out of their wedlock. In the month of May 2011, when Applicant No. 1 was pregnant, the Respondent got affair with another lady and as a result of which he thrown the Applicants out of his house and started living with that lady as husband and wife. It was further pleaded that the Applicants are unable to maintain themselves, the Respondent is working as Siksha karmi Grade-III and has sufficient income, therefore, they had prayed for grant of maintenance of Rs. 1500/- for each, total Rs. 4500/-.
3. In his reply, the Respondent denied all the allegations made against him. It was categorically pleaded by him that neither he has relation with Applicant No. 1 nor Applicants 2 & 3 are his children, therefore, they are not entitled to get any maintenance from him. It was further

pleaded by him that Applicant No. 1 is working as Aagan Badi Karyakarta and getting Rs. 4500/- monthly salary, therefore, she is capable to maintain herself as well as Applicant Nos. 2 & 3.

4. Before the Family Court, both the parties have examined themselves and submitted certain documents.
5. After recording of the evidence, the learned Family Court vide order dated 10/07/2015 has partly allowed the application in favour of Applicants 2 & 3 and granted monthly maintenance of Rs. 1500/- each, and rejected the application with regard to Applicant No. 1. on the ground that she is capable to maintain herself.
6. Criminal Revision 665/2015 has been preferred by the Applicants on the grounds that though as stated by the Respondent/Husband that she is working as Aagan Badi Karyakarta and is getting Rs. 2900/- monthly, she has no source of income and the Family Court has ignored this Fact. The learned Family Court ought to have considered the fact that the Respondent is posted at Siksha Karmi Grade-III and has sufficient means to maintain Applicant No. 1 also. The Family Court ought to have also considered the fact that the Applicants are residing in a rented house and she is only care taker of Applicants 2 & 3, therefore, she may also be granted maintenance.
7. Criminal Revision 842/2015 has been preferred by the Applicant/Husband (henceforth 'the Husband') on the grounds that there is no admissible evidence which shows that the Applicant and Respondent No. 1 are husband-wife. The Family Court has grossly

erred in holding that Respondent No. 2 & 3 who are illegitimate children born out of the relation of Respondent No. 1 and the Applicant. Since Respondent No. 1 is not legally wedded wife and Respondents 2 & 3 are not his children, therefore, they are not entitled to get any maintenance.

8. I have heard counsel for the parties and perused the record.
9. While dealing with this issue in the matter of **Badshah v. Urmila Badsah Godse, (2014) 1 SCC 188**, the Supreme Court has observed thus:

*“12. No doubt, in **Chanmuniya v Virendra Kumar Singh Kushwaha, (2011) 1 SCC 141**, the Division Bench of this Court took the view that the matter needs to be considered with respect to Section 125 Cr.P.C, by a larger Bench and in para 41, three questions were formulated for determination by a larger bench which are as follows:*

- 1. Whether the living together of a man and woman as husband and wife for a considerable period of time would raise the presumption of a valid marriage between them and whether such a presumption would entitle the women to maintenance under Section 125 Cr.P.C?*
- 2. Whether strict proof of marriage is essential for a claim of maintenance under Section 125 Cr.P.C having regard to the provisions of the Domestic Violence Act, 2005?*
- 3. Whether a marriage performed according to the customary rites and ceremonies, without strictly fulfilling the requisites of Section 7 (1) of the Hindu Marriage Act, 1955, or any personal law would entitle the Woman to maintenance under Section 125 Cr.P.C?*

13. On this basis, it was pleaded before us that this matter be also tagged along with the aforesaid case. However, in the facts of the present case, we do not deem it proper to do so as we find that

the view taken by the Courts below is perfectly justified. We are dealing with a situation where the marriage between the parties has been proved. However, the petitioner was already married. But he duped the respondent by suppressing the factum of alleged first marriage. On these facts, in our opinion, he cannot be permitted to deny the benefit of maintenance to the respondent, taking advantage of his own wrong. Our reasons for this course of action are stated hereinafter:

13.1 Firstly, in Chanmuniya (Supra) case, the parties had been living together for a long time and on that basis question arose as to whether there would be a presumption of marriage between the two because of the said reason, thus, giving rise to claim of maintenance under Section 125 Cr.P.C. by interpreting the term "wife" widely. The Court has impressed that if man and woman have been living together for a long time even without a valid marriage, as in that case, term of valid marriage entitling such a woman to maintenance should be drawn and a woman in such a case should be entitled to maintain application under Section 125 of the Cr.P.C. On the other hand, in the present case, Respondent 1 has been able to prove, by cogent and strong evidence, that the petitioner and Respondent 1 had been married to each other.

10. In light of above, if I examine the facts of this case, I found that in paras 4 -5 of his cross examination, the Husband had admitted the fact that he has filed a divorce petition against the Applicant No. 1 (in CRR No. 665/2015) (henceforth 'the Wife'). He also admitted the fact that the Wife had filed a case relates to Section 498-A IPC against him. It was further admitted by him that Applicants 2 & 3 (in CRR No. 665/2015) (henceforth 'the Children') are his children. In his examination in chief also, he admitted the fact that the Wife had resided with him since 2000 and due to their relation, the said Children

got born. From the above, it is clear that the Wife and the Husband resided together as husband and wife, and out of their relation the children were borne. Therefore, the wife is also entitled to get maintenance, if she is unable to maintain herself.

11. The Family Court has rejected the application of the Wife on the ground also that she is working as Aagan Badi Karyakarta and getting monthly salary of Rs. 2900/-. During her cross-examination this fact has been admitted by the Wife, but she also deposed that she resides in a rented house with the Children. Considering this aspect, it cannot be presumed that the said amount of Rs. 2900/- is sufficient for maintenance of herself as well as to her children. Contrary to this, it is established that the Respondent is working as Siksha Karmi getting monthly salary of Rs. 9840/-.
12. Looking to the above facts and circumstances, in my considered opinion, the Wife is also entitled to get some maintenance from the Husband.
13. Considering the social and financial status of both the parties and further considering monthly income of the Husband, in my view, Rs. 1500/- would be proper as monthly maintenance to the Wife. Therefore, it is ordered that the Applicant/Husband in CRR No. 842/2015 shall now pay Rs. 1500/- per month as monthly maintenance to the Wife/Applicant No. 1 in CRR No. 665/2015 from today.
14. Consequently, CRR No. 665/2015 filed is allowed to the extent indicated above and CRR No. 842/2015 is dismissed.

Sd/-
(Arvind Singh Chandel)
Judge