

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 766 of 2015**

1. Ganga Bai W/o Santosh, aged about 30 years,
2. Umesh S/o Santosh, aged about 7 years,
Minor through natural guardian mother namely Ganga Bai, Caste- Raut (Yadav), Both are R/o Ward No. 7 Pandariya, Police Station and Tahsil- Pandariya, Civil and Revenue District Kabirdham (C.G.)

----Applicants**Versus**

Santosh S/o Sansiram, aged about 38 years R/o Ward No. 7 Pandariya, Police Station and Tahsil Pandariya, District Kabirdham (C.G.)

Present Address Village Manpur, Police Station and Tahsil Mungeli, District Mungeli (C.G.)

---- Respondent

For Applicants	:	Mr. Dharmesh Shrivastava, Advocate
For Respondent	:	Mr. Sunil Sahu, Advocate

Hon'ble Shri Justice Arvind Singh Chandel
Order on Board

21/01/2019

1. This revision has been preferred against order dated 29/07/2015 passed by the Family Court, Kabirdham in Miscellaneous Criminal Case No. 54/2015, whereby the learned Family Court rejected the application under Section 125 of the Code of Criminal Procedure with regard to Applicant No.1 and partly allowed the application in favour of Applicant No.2 and granted monthly maintenance of Rs. 1000/- in his favour.
2. The Applicants had preferred an application under Section 125 of the Code of Criminal Procedure before the Family Court, wherein it was pleaded by them that Applicant No.1 got married with the Respondent eight years ago with custom rites and rituals. Due to their wedlock, Applicant No. 2 born. After birth of Applicant No. 2, behavior of the

Respondent turned and he left the Applicants and moved anywhere. It was further pleaded by them that Applicant No. 1 is unable to maintain herself as well as to Applicant No.2. The Respondent is earning Rs. 500/- per day. He has sufficient means to maintain the Applicants, thus they prayed for monthly maintenance of Rs. 3000/- and Rs. 2000/- for Applicant Nos.1 and 2, respectively before the Family Court.

3. In his reply, the Respondent denied the fact that Applicant Nos. 1 & 2 are his wife and son. It was further pleaded by him that he got married with one Bhrispati Bai and they have three children, who are aged about 15, 13 and 11 years, respectively. It was further pleaded that Applicant No. 1 is wife of one Paras R/o Village Khamhi and the said Paras is father of Applicant No.2. Due to some previous enmity, a false application has been filed against him. Since after filing of the reply, the Respondent was not present before the Family Court, thus the Family Court proceeded ex-parte.
4. Ganga Bai examined herself as Applicant Witness No.1 and also examined her mother Suhaga Bai as Applicant Witness No.2.
5. I have heard learned counsel for both the parties and perused the records.
6. From the evidence adduced by the Applicants, it is clear that in her statement Applicant No. 1 Ganga Bai stated that she got married with the Respondent eight years ago and resided with him at Pandariya. Applicant No. 2 got birth there. Thereafter, the Respondent left them and went to his paternal house and did not return. Applicant No.1 herself produced a document Ex.A/3 which is a report made by her in the Police

Station on 19/11/2014. In the said report, she herself admitted the fact that she is second wife of the Respondent and on 01/11/2014 the Respondent after quarreling with her had gone to his first wife.

7. From the above, it is clear that Applicant No. 1 is second wife of the Respondent. First wife of the Respondent is residing with him along with their children. There is nothing on record which shows that the Respondent, by suppressing the fact of his previous marriage, has performed second marriage with Applicant No.1. Document Ex.A/3 also shows that Applicant No. 1 knew the fact that the Respondent was previously married with another lady and residing with her along with her children. Looking to the above facts and circumstances, the finding of the Family Court in this regard is in accordance with law and the evidence adduced by the Applicants. Therefore, the Family Court has rightly rejected the application under Section 125 Cr.P.C of Applicant No. 1.
8. With regard to Applicant No. 2, Applicant No. 1 has categorically stated that she was residing at Pandariya with the Respondent and there Applicant No. 2 got birth because of their relation. This statement of Applicant No. 1 is not rebutted by the Respondent. From the document Ex.A/2 and birth certificate Ex.A/4, it is established that there is entry of the Respondents as father of Applicant No. 2 in those certificates. Thus, it is well established that Applicant No. 2 is illegitimate son of the Respondent and therefore, he is entitled to get maintenance from his father i.e. Respondent. Therefore, the learned Family Court has rightly granted maintenance in favour of Applicant No.2
9. With regard to quantum of maintenance, both Applicant No. 1 and her

mother Suhaga Bai stated that the Respondent owned 3 acres of agricultural land and earning Rs. 2 to 2.5 lakh annually. They also stated that the Respondent owned 3 cows and running business of Milk. Their above statement was not rebutted by the Respondent.

10. Considering the above facts and circumstances of the case and considering the social and financial status of the Respondent, the maintenance of Rs. 1000/- awarded by the Family is on lower side. Therefore, the order dated 29/07/2015 passed by the Family Court (Annexure-A/1) is modified to the extent that the Respondent shall now pay Rs. 3000/- to Applicant No.2 as monthly maintenance. The above modification in the said order shall be effective from today.
11. Accordingly, this revision is partly allowed to the extent indicated above.

Sd/-
(Arvind Singh Chandel)
Judge