

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 21.8.2019****Order delivered on 21.11.2019****CRR No. 1029 of 2016**

- Smt. Seema Naidu W/o Sonal Naidu Aged About 22 Years R/o Ward No. 40, Ahead The House Of Shridhar, Near The House Of Neera, Nehru, Nagar, Balco Nagar, Police Station - Balco Nagar, Tahsil And District Korba Chhattisgarh , Chhattisgarh

---- Applicant**Versus**

- Sonal Naidu S/o Babloo Naidu Aged About 26 Years R/o Below Chandika Temple, Sitamani, Korba, Police Station - Kotwali, Korba, Tahsil And District - Korba Chhattisgarh , Chhattisgarh

----Respondent

For Applicant	: Shri Goutam Khetrapal, Advocate
For Respondent	: Shri Parag Kotecha, Advocate

Hon'ble Smt. Justice Rajani Dubey**CAV Order**

1. Heard on admission.
2. This revision is directed against the order dated 29.9.2016, passed by the Judge, Family Court, Korba, District Korba(CG) in MJC No. 68-A/2016, whereby the Judge Family Court has rejected the application filed by the applicant under Section 125 Cr.P.C.
3. Brief facts of the case are that before the Family Court the applicant/wife filed an application under Section 125 Cr.P.C. against the respondent/ husband on the ground that their marriage was solemnized on 4.2.2013 according to Hindu rites and customs and after some time of marriage the

respondent/husband started harassing her for demand of dowry and developed illicit relations with another lady. Due to harassment and cruelty on the part of the respondent/husband and family members, the applicant lodged FIR at Police Station Kotwali, Korba under Section 498-A of the IPC. The applicant is unable to maintain herself as she has no source of income, therefore, she filed application under Section 125 Cr.P.C. demanding maintenance of Rs.10000/- per month from the respondent/husband.

4. In reply, the respondent denied all the allegations levelled against him and pleaded that the applicant is not his legally married wife, therefore, she is not entitled for any maintenance under Section 125 Cr.P.C.
5. The Family Court after appreciating the oral and documentary evidence, rejected the application filed by the applicant holding that she is not legally married wife of the respondent. Hence, this revision has been filed by the applicant for grant of maintenance.
6. Learned counsel for the applicant submitted that the impugned order is against the facts and circumstances of the case. The application filed under Section 125 Cr.P.C. is summary in nature and while dealing with the application, the Family Court has acted as dealing with an application under Section 12 of the Hindu Marriage Act, therefore, the impugned order is not sustainable. He further submitted that no issue regarding void or voidable marriage between the parties was framed and the respondent has

admitted his marriage with the applicant, therefore, the Family Court has committed grave error of law in deciding the marriage status of the parties without any evidence. He placed reliance on **2014(1) SCC 188, Badshah Vs. Urmila Badshah Godse and Another.**

7. Learned counsel for the respondent supported the impugned order and submitted that the order passed by the Family Court is just and proper and requires no interference by this Court. He further submitted that the applicant is not legally married wife of the respondent, therefore, she is not entitled for any maintenance under Section 125 Cr.P.C. He submits that the term 'wife' used in the section means only a legally wedded wife, and as the marriage of the applicant with the respondent is a second marriage and void by reason of the provisions of the Hindu Marriage Act, 1955, she is not entitled to any relief under Section 125 Cr.P.C. He placed reliance on **(2005) AIR (SC) 1809, Savitaben Somabhai Bhatiya Vs. State of Gujarat and Others** and **AIR 1998 SC 644, Yamunabai Anantrao Adhav Vs. Anantrao Shivram Adhav and Another.**
8. I have heard learned counsel for the parties and perused the record.
9. Before the Family Court both the parties have adduced their evidence. The applicant/wife has examined 4 witnesses and she herself has deposed that she was married to the respondent on 4.2.2013. The respondent has also examined 4 witnesses and he

has also deposed that he was married to the applicant in the year 2013. The respondent has examined his wife- Smt. Pooja Naidu as NAW2, who has deposed that she was married to the respondent on 23.7.2012 and she is first wife of the respondent. After going through the statement of the applicant and the wife of the respondent, it is clear that the respondent was married to Smt. Pooja Naidu (NAW2) in the year 2012 and the applicant married to the respondent in the year 2013, which is evident that the applicant is the second wife of the respondent. The applicant has admitted in her cross-examination that her mother and father of the respondent are real brother and sister. Therefore, it cannot be believed that being a close relative, the applicant was no knowledge about the first marriage of the respondent. The Family Court in paragraphs 9 to 13 has also appreciated the evidence and reached to the conclusion that the applicant is second wife of the respondent and therefore, her marriage with the respondent is not valid and she is not entitled for maintenance under Section 125 Cr.P.C. and thereby rejected the application of the applicant.

10. In view of the judgments of the Hon'ble Apex Court in the matters of **Savitaben Somabhai Bhatiya**(supra) and **Yamunabai Anantrao Adhav** (supra), marriage of a woman in accordance with the Hindu rites with a man having a living spouse is a complete nullity in the eye of law and she is not entitled to the benefit of Section 125 Cr.P.C. In the present case, it is proved that marriage of the applicant with the respondent is second marriage

and, therefore, she is not entitled to get any maintenance. Considering the overall facts and the evidence, I am of the view that the Family Court has rightly passed the order and there is no irregularity or illegality warranting interference by this Court.

- 11.** Accordingly, the revision has no merits and the same is dismissed at the motion stage itself.

Sd/

(Rajani Dubey)

JUDGE