

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 1074 of 2017**

Ramsingh Baghel @ Raju Baghel S/o Shri Titaradas Baghel, aged about 43 years R/o Village & Post Office Goindari, P.S. Pathariya District Mungeli (C.G.).

----Applicant**Versus**

Smt. Sarita Baghel W/o Ramsingh Baghel @ Raju Baghel, aged about 39 years R/o Sant Kabeerdas Ward No. 03, Near Jai Stambh Chowk, Purani Basti Gogaon, Raipur (C.G.).

---- Respondent

For Applicant	:	Mr. Rajesh Kumar Sharma, Advocate
For Respondent	:	Mr. Amit Kumar Sahu, Advocate

Hon'ble Shri Justice Arvind Singh Chandel**Order on Board****14/03/2019**

1. This revision has been preferred by the Applicant against order dated 13/10/2017 passed in MJC No. 665/2014 passed by the First Additional Principal Judge, Family Court, Raipur, whereby the learned Family Court allowed the application submitted under Section 125 Cr.P.C filed by the Respondent and granted monthly maintenance of Rs. 6000/- in her favour.
2. Before the Family Court, the Respondent had filed an application under Section 125 of the Cr.P.C on the ground that she had performed marriage with the Applicant prior to 16 years. They lived together as husband and wife firstly at village- Gondri, Mungeli, thereafter at Raipur. On 12/07/2014, the Applicant after taking ornaments and property paper, left the house without informing her. A missing report was also lodged by her. Later on, she had been informed that the Applicant had kept another lady as his wife

and is residing with her at Mungeli. It was further pleaded that being a lady, she is unable to maintain herself. The Applicant has sufficient means to maintain her.

3. In his reply, the Applicant denied whole allegations made against him. It was pleaded that the Respondent is not legally wedded wife of him as she had earlier performed marriage with one Bhaktu Ram and she did not take any divorce from her earlier husband. It was further pleaded by the Applicant that at one time the Respondent was in some trouble and on her request, he had given his house on rent at village Gogoan, since then, the Respondent has shown the Applicant as his husband. It was also pleaded by him that since the Respondent is not his wife nor he has resided with her, therefore, she is not entitled to get any maintenance from him.
4. Before the Family Court, Respondent examined herself as Applicant Witness No. 1 and also examined two other witnesses namely Bhoj Ram and Sunit Raj as Applicant Witness Nos. 2 & 3. The Applicant examined himself as Non-Applicant Witness No. 1 and also examined one witness namely Narvariya Bai as Non-Applicant Witness No.2. Both the parties have submitted some documents also in their support.
5. After recording the evidence of both the parties and hearing their submissions, the learned Family Court vide impugned order dated 13/10/2017 has granted the monthly maintenance of Rs. 6000/- in favour of the Respondent. Thus, this revision has been preferred by the Applicant.
6. Counsel for the Applicant submits that there is sufficient evidence available on record which shows that the Respondent is not legally wedded wife of

the Applicant. He further submits that there is sufficient evidence that the Respondent is already married with one Bhaktu Ram, but ignoring this fact the learned Family Court has granted monthly maintenance of Rs. 6000/- in favour of the Respondent. He further submits that looking to the financial status and other responsibility of the Applicant and also looking that the Respondent is working as Mitnin, Rs. 6000/- as monthly maintenance granted by the Family Court is also on higher side.

7. Counsel for the Respondent supported the impugned order.
8. I have heard counsel for the parties and perused the records.
9. In her statement, the Respondent has categorically stated that the marriage between both of them was solemnized prior to 16 years at village Gogaon. Thereafter, both had resided about 5-6 years at village- Goindri, and thereafter at village Gogao, Raipur as husband and wife. Bhojram (Applicant Witness No. 2 therein) and Sunit Lal (Applicant Witness No. 3 therein) have also supported the above statement of the Respondent/Wife. Both have categorically stated that they were neighbours of the Respondent and the Applicant. They also categorically stated that the Respondent and the Applicant were resided together as husband and wife near them. Some photographs of the Applicant and the Respondent have been submitted by the Respondent. The Respondent also submitted a Voter ID of both the parties. From perusal of voter ID of the Respondent, it is clear that the name of the Applicant has been mentioned as her husband. Thus, it is well established that both the Applicant and the Respondent resided together as Husband and Wife for a long period.

Though, it was pleaded by the Applicant that the Respondent was earlier married with one Bhaktu Ram, there is no documentary evidence submitted by the Applicant in this Regard. Therefore, there is nothing on record on the basis of which, it can be presumed that the Respondent has performed married with one Bhaktu Ram.

10. 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.

11. If we examined the facts of the case in light of the above judgment, it is well established that both the Applicant and the Respondent had resided together for a long period as husband and wife, therefore, the finding of the Family Court in this regard is in accordance with law.
12. With regard to quantum of maintenance, though it was pleaded by the Respondent that the Applicant is working as contractor and also owned some agricultural land, there is no documentary evidence submitted by the Respondent in this regard. Narvariya Bai (Non-applicant Witness No. 2 therein) admitted the fact that the Applicant is working as Mason (Mistri), but what income is he getting from that work has not been disclosed before the Family Court. Thus, on what basis, the Family Court has granted maintenance of Rs. 6000/- in favour of the Respondent is not established. From the evidence it is also established that the Respondent is also

working as Mitnin and she is getting some income from that work. As admitted by Narvariya Bai (Non-Applicant Witness No. 2 therein), the Applicant has performed second marriage and has some children from his second wife.

13. Considering the facts and circumstances of the case and looking to the other liability of the Applicant/Husband and further considering that the Respondent is also working as Mitnin and getting some income, in my considered view, Rs. 3500/- as monthly maintenance would be just and proper. Therefore, it is ordered that the Applicant shall now pay Rs. 3500/- to the Respondent as monthly maintenance from today.

14. Consequently, the revision is partly allowed.

**Sd/-
(Arvind Singh Chandel)
Judge**