

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 298 of 2014**

1. Rukhsana Parveen @ Phoolmani Beck, W/o Mohd. Kadir Ansari.
2. Rashmi Khatun D/o Kadir Ansari, Aged about 11 years, (through her natural guardian), the petitioner No. 1.
3. Rustam Ansari S/o Kadir Ansari, Aged about 6 years, (through her natural guardian), the petitioner No. 1.

All R/o Village Jashpur Nagar (Madhuban Toli),
Tahsil and District Jashpur, Chhattisgarh.

---Petitioners

Versus

1. Kadir Ansari S/o Mohd. Tahir Ansari.
2. Muskan D/o Mohd. Tahir Ansari, Aged about 9 years, (through her natural guardian) Respondent No. 1.

Both are R/o Village Basantala, P.S. Narayanpur,
Tahsil Kunkuri, District Jashpur, Chhattisgarh.

--- Respondents

For Petitioners :- Mr. Dilman Rati Minj, Advocate

For Respondents :- Mr. A.K. Prasad, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

09/12/2020

1. Petitioner No. 1 herein is the wife of respondent No. 1 and petitioners No. 2 and 3 are her children born out of her wedlock with respondent No. 1. On account of dispute between petitioner No. 1 and respondent No. 1, petitioner No. 1 moved an application under Section 125 of CrPC for grant of maintenance stating *inter alia* that she is unable to maintain herself and her children on account of no earning and respondent No. 1 is also not maintaining her and her children though he is legally obliged to do so. The said application filed by petitioner No. 1 under Section 125 of CrPC was partly granted by learned Chief Judicial Magistrate holding that petitioners No. 2 and 3 as well as respondent No. 2 i.e. the children are entitled for maintenance from respondent No. 1 to the tune of Rs. 1,000/- per month whereas petitioner No. 1 i.e. wife, being a teacher in the school run by Madarsa Board, earns herself and is competent to maintain herself, therefore, she is not entitled for grant of maintenance from respondent No. 1 which was upheld by the revisional Court in the revision preferred by petitioner No. 1.

2. Mr. Dilman Rati Minj, learned counsel appearing for the petitioners, would submit that both the Courts below are absolutely unjustified in not granting maintenance to petitioner No. 1 merely holding that she is a teacher in the school run by Madarsa Board, as such, she is competent to maintain herself whereas she is getting a nominal salary of Rs. 1,000/- per month which has even not been paid to her by the school for the last three years and it has already been recorded by learned Chief Judicial Magistrate in his order. Petitioner No. 1 is the legally wedded wife of respondent No. 1, as such, he is obliged to maintain her and earning a small income, if any, would not disentitle the petitioner No. 1 from grant of maintenance from respondent No. 1, as such, the impugned order passed by learned Chief Judicial Magistrate as well as the revisional Court to the extent of holding that petitioner No. 1 is not entitled for maintenance from respondent No. 1 deserves to be set aside.

3. Mr. A.K. Prasad, learned counsel appearing for the respondents, would submit that petitioner No. 1 works as a teacher in the school run by

Madarsa Board and is getting salary which makes her competent to maintain herself and even the respondent No. 1 has been removed from service on account of the complaint made by petitioner No. 1, therefore, respondent No. 1 is not entitled to pay any amount further as maintenance to petitioner No. 1, as such, the finding recorded by both the Courts below that petitioner No. 1 is competent to maintain herself is a finding of fact based on evidence available on record which is neither perverse nor contrary to the record.

4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the record with utmost circumspection.

5. The relationship between petitioner No. 1 and respondent No. 1 is not in dispute and both the Courts below have concurrently held that they are husband and wife tied in a legally valid wedlock, as such, no doubt or question arises for consideration in this regard.

6. The next question for consideration would be with regard to the maintenance not being granted to petitioner No. 1 on the ground that she is

working as a teacher and is earning some salary which makes her competent to maintain herself, therefore, she is not entitled for grant of maintenance from respondent No. 1.

7. A careful perusal of the order of learned Chief Judicial Magistrate would show that petitioner No. 1 is working as a teacher in a school run by Madarsa Board for which she gets a nominal amount of Rs. 1,000/- per month as salary and moreover, she has not even been paid the salary for the years 2008, 2009, 2010 and 2011. Assuming the said finding to be correct, it cannot be held that petitioner No. 1 earns a reasonable sum to maintain herself looking to the price index, cost of living, day to day expenses, medicine, clothing, etc. Even otherwise, respondent No. 1, being the legally wedded husband of petitioner No. 1, is obliged to maintain his wife even though the wife is earning a meagre income of Rs. 1,000/- per month. As such, respondent No. 1 cannot avoid paying maintenance amount to his wife i.e. petitioner No. 1 on the ground that she is working as a teacher and earns Rs. 1,000/- per month herself which is sufficient to maintain

herself. Even if respondent No. 1 has been removed from service, he cannot refuse to pay maintenance amount to his wife i.e. petitioner No. 1.

8. Consequently, the impugned part of the order of learned Chief Judicial Magistrate as affirmed by the revisional Court holding that petitioner No. 1 is not entitled for grant of maintenance from respondent No. 1 is hereby set aside. It is directed that respondent No. 1 would pay Rs. 1,500/- per month to petitioner No. 1 as maintenance from 09/07/2013 i.e. the date of the order passed by learned Chief Judicial Magistrate by which learned Magistrate has already granted maintenance to the petitioners No. 2 and 3 as well as respondent No. 2 i.e. the children. The arrears would be paid within 60 days from the date of this order.

9. Accordingly, the instant petition is allowed to the extent indicated herein-above. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge