

HIGH COURT OF CHHATTISGARH, BILASPUR
Cr.M.P.No.727 of 2013

Mohd. Ibrahim S/o Shri Jalil Ahmad, aged about 51 years, R/o Village-Aara Balrampur, Police Station-Dhaurpur, Tahsil-Rajpur, Distt.-Sarguja (CG) Present Address: Presently Working as Peon at the Court of City Magistrate, Ambikapur, Distt.-Surguja (CG)

---Petitioner

Versus

1. Khairun Nisha D/o Shri Shekh Mohammad, Aged About-41 years,
2. Mohd. Imtiyaj S/o Mohd. Ibrahim, Aged About-16 years, Minor Through Natural Guardian-His Mother-Khairun Nisha (the Respondent No.1)

Both R/o Pratappur, Police Station & Tahsil - Pratappur, Distt.-Sarguja (CG)

---Respondents

For Petitioner	:	Mr.Rishi Rahul Soni, Advocate
For Respondents	:	Mr.D.N.Prajapati, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

07/12/2020

1. This petition filed by the petitioner under Section 482 of the CrPC is directed against the order dated 22.6.2013 passed by the Additional Sessions Judge, Surajpur, in Criminal Revision No.89/2011, by which the Additional Sessions Judge dismissed the revision filed by the petitioner and affirmed the order dated 11.4.2011 passed by the Judicial Magistrate First Class, Surajpur in Misc. Criminal Case No.373/2009, whereby learned trial Magistrate allowed the

application filed by respondents No.1 and 2 under Section 125 of the CrPC and granted maintenance of ₹1000/- per month to respondent No.1 and ₹500/- per month to respondent No.2, who are said to be wife and son of the petitioner.

2. Mr. Rishi Rahul Soni, learned counsel for the petitioner, would submit that since respondent No.1 was earlier married with Mohd. Idris, which she has admitted in her statement, therefore, maintenance could not have been granted to her and the petitioner's case is covered under Section 125(4) of the CrPC.
3. Mr. D.N. Prajapati, learned counsel for the respondents, would support the impugned order.
4. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. The trial Court having found that the petitioner has married with respondent No.1 in accordance with custom prevailed among Mohammedans and respondent No.2 is his son out of his wedlock with respondent No.1, proceeded to grant maintenance of ₹1000/- per month to respondent No.1 and ₹500/- per month to respondent No.2.
6. It appears from the record that the petitioner has raised a plea before the trial Court that respondent No.1 was

earlier married with Mohd.Idris, but no issue was framed in this regard by the trial Court. In fact, this fact was not pressed before the trial Magistrate, therefore, no such issue was framed by the trial Court. However, new plea cannot be permitted to be raised before this Court. The trial Court has clearly recorded a finding that the petitioner was married with respondent No.1 and respondent No.2 is son out of their wedlock, therefore, they are entitled for maintenance. The finding of two Courts below that there is relationship between the petitioner and respondent No.1 as husband and wife is a finding of fact based on evidence available on record, which is neither perverse nor contrary to record.

7. In that view of the matter, the trial Court has rightly granted maintenance of ₹1000/- per month to respondent No.1 and ₹500/- per month to respondent No.2, which has rightly been affirmed by the revisional Court. I do not find any illegality or perversity in order granting maintenance by the trial Court as affirmed by the revisional Court.
8. Accordingly, the petition under Section 482 of the CrPC is liable to be and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-