

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 1104 of 2019

Shivendra Dhruv, S/o. Naveen Chandra Dhruv. Aged About 24 Years.
Through : Legal Guardian, Mother Jayanti Bai, W/o. Naveen Chandra Dhruv,
R/o. Village Jhadmokhali, Police Station Ranitarai, Tahsil Patan, District Durg
Chhattisgarh.

---- Applicant

Versus

Naveen Chandra Dhruv, S/o. Thakur Ram Dhruv, Working as Head Master,
Government Primary School, Rico, Sankul Centre Mandir Hasaud, Tahsil
Arang Chhattisgarh. R/o. Village Dumartarai, Post Mana Campa, District
Raipur Chhattisgarh.

-----Respondent

For Applicant	: Mr. Praveen Dhurandhar, Advocate
For Respondent	: Ms. Richa Dwivedi, Advocate on behalf of Mr. Pankaj Agrawal, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

03/02/2020

1. Challenge in this petition is to the order dated 08.08.2019, passed in Miscellaneous Criminal Case No.1110/2014, passed by the learned Third Additional Principal Judge, Family Court -Durg, District – Durg (C.G.) dismissing the application filed by the applicant under Section 125 of Cr.P.C.
2. It is submitted that the applicant is son of the respondent. As the applicant is mentally challenged person, therefore, on this basis, he made a prayer for grant of maintenance. The learned Family Court has erroneously held that the evidence presented is not sufficient for the reason that the applicant had not filed any

certificate of Medical Board and disbelieved the evidence of Psychiatrist Dr. Pramod Gupta on erroneous grounds. Therefore, the order impugned is unsustainable. The applicant is entitled for grant of maintenance. Therefore, this revision petition be allowed and the order of maintenance be passed in favour of the applicant and against the respondent.

3. Reliance has been placed on the judgment of Supreme Court in case of ***Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit & Anr.***, reported in ***(1999) 7 SCC 675***, judgment of this Court in case of ***Smt. Shikha Majumdar & Anr. Vs. Anutosh Majumdar***, reported in ***2014 SCC OnLine Chh 106***, and the judgment passed by this Court in ***Cr.R. No.180 of 2005 and M.Cr.C. No. 572 of 2005***, passed ***on 12.08.2016***. It is argued that there is no requirement of strict proof in the proceeding under Section 125 of Cr.P.C.
4. Per contra, learned counsel for the respondent submits that the learned Family Court has not committed any error in passing the impugned order. It has been clearly held that the applicant is major and he has capability to earn his living. The ground of incapability of the applicant has not been proved by bringing evidence in that respect. The applicant was required to produce and prove the certificate of his disablement, which he was required to obtain under the provisions of Nishakt Vyakti (Saman Avasar, Adhikar Sanrakshan Aur Purna Bhagidari), Adhiniyam, 1995 as the applicant has failed to produce such evidence,

therefore, no fault can be found with the impugned order. It is prayed that the revision petition be dismissed.

5. I have heard learned counsel for the parties and perused the documents placed on record.
6. It is undisputed that the applicant is son of the respondent and he is aged 24 years. Further the capability of the respondent to make payment of maintenance is also not disputed.
7. The only issue to be examined in this case is this whether the applicant is mentally challenged person.
8. The applicant himself has not been examined and on his behalf, his mother Smt. Jayanti Bai (A.W.-2) has been examined, who has stated that the applicant is a patient of Schizophrenia, his treatment is continuing in Central India Institute of Mental Health and Neuro Science Hospital Dewada, District – Rajnandgaon. She has filed documents showing the treatment of the applicant for his mental incapacity. In cross-examination, she has admitted that she has not made any registration of the applicant in Nishaktjan Ayog and she has denied other adverse suggestions given on that point.
9. Dr. Pramod Gupta (A.W.-1) has stated that he is Psychiatrist, being posted in Central India Institute of Mental Health and Neuro Science Hospital Dewada, District – Rajnandgaon. He has stated that the applicant is under his treatment since 14.11.2013. He has diagnosed that the applicant is suffering from Paranoid Schizophrenia. He has further stated that symptoms of the

applicant are continuing. He has also stated that he can not make a statement that at present whether the applicant can defend himself or not. In cross-examination, he has not admitted any such suggestion that the applicant can get cured in future.

10. Respondent has stated in denial in his deposition, before the Court. He has admitted in his cross-examination that he received documents regarding the treatment of the applicant at the time of filing application for maintenance. He has further admitted that he himself has not taken the applicant, his son to the Dr. Pramod Gupta, but has stated on his own that his mother has taken him to the doctor. He has further stated that the applicant is not insane.
11. The respondent/non-applicant, has not made any effort to contradict or to rebut the statement given by Dr. Pramod Gupta (A.W-1), who has clearly stated that the applicant is suffering from Paranoid Schizophrenia, which is advance stage of insanity. Only for the reason that this witness could not make statement whether this applicant is capable to defence himself or not, is not sufficient to draw any conclusion. His statement about the continuing of the conditions of the applicant has also not been specifically rebutted that has also been supported by the mother of the applicant herself. The reference made by the respondent side to Nishakt Vyakti (Saman Avasar, Adhikar Sanrakshan Aur Purna Bhagidari), Adhiniyam, 1995 does not come to any help for the reason that this is the Act and Rules with regard to

certification of disability of such person, who are suffering from disability. Certification itself or any certificate produced itself is not a kind of proof and even without production of which, the issue raised, before the Court, can be determined.

12. As it is held in the judgment cited by the applicant side that there is no requirement of strict proof in the proceeding under Section 125 of Cr.P.C. and further it is also a question that the proceeding under Section 125 of Cr.P.C. is a case having nature, which is a case of quasi civil and quasi criminal. Although the provisions under the Code of Cr.P.C. the claim made and the determination for the same as provided and followed are according to the Civil Procedure. Therefore, the standard of proof in such cases is not the same as it is in the criminal cases, the parties making the claim or denying the same have to bring evidence or rebut the evidence only to that length so that preponderance of probability are found established in favour of one of the parties. As have been discussed and as i.e. present and appreciated hereinabove, I am of this view that the evidence of applicant's side regarding mental condition and insanity of the applicant has not successfully rebutted by the respondent side. This fact that the applicant is mentally challenged and he had been taken treatment for the same is totally unrebutted. Therefore, it was clearly established that the applicant is mentally challenged or insane person and this much of evidence which remains unrebutted is sufficient to draw conclusion that the applicant is a

person with disability.

13. Section 125 (1) (c) provides that legitimate or illegitimate child, who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, is entitled for maintenance. Therefore, on the basis of the conclusion drawn in this order, it can be safely held that the applicant had very clearly proved that he is mentally challenged person, therefore, he is suffering from mental abnormality. Hence, he has entitlement for maintenance under Section 125 of Cr.P.C.
14. Consequently, this revision petition filed by the applicant succeeds. The impugned order is set-aside to the extent, wherein it was held that the applicant has no entitlement for maintenance and there being presence of proof of other requirements regarding his relation with the respondent neglect by the respondent and the capability of the respondent to pay maintenance, the prayer for maintenance deserves to be allowed, which is allowed and it is ordered that the respondent shall pay maintenance of Rs.6,000/- to the applicant monthly from the date of filing of the application.
15. Accordingly, the revision petition is allowed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge