

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1409 of 2018

- Smt. Preeti Pathak W/o Parmanand Pathak, Aged About 40 Years, Present R/o Behind Mahatma Gandhi School, Ganga Muddha Ward, Jagdalpur, District Bastar, Chhattisgarh. Permanent R/o 5th Batallion Colony, Jagdalpur, District Bastar, Chhattisgarh., District : Bastar (Jagdalpur), Chhattisgarh

---- Petitioner/Applicant

Versus

- Parmanand Pathak S/o Mansukh Ram Pathak, Aged About 40 Years, R/o 5th Batallion Q. No. 2 Colony, Jagdalpur, District Bastar, Chhattisgarh., District : Bastar (Jagdalpur), Chhattisgarh

----Respondent

For Applicant/Petitioner – Ms. Madhunisha Singh, Advocate.

For Respondent – Mr. Harshal Chouhan, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

27-01-2020

1. This revision petition has been brought challenging the legality, propriety and correctness of the order dated 08-06-2018 passed in MJC No.47/2014 dismissing the application under Section 125 of the Cr.P.C. filed by the applicant.

2. It is submitted by learned counsel for the applicant that the only ground on which the application was rejected is this, that the Court below has held that the marriage of the applicant with the respondent was not found proved and therefore, she is not legally wedded wife of the respondent.

It is submitted that the applicant had brought evidence before the Court making a clear statement regarding execution of one agreement on 10-03-2004 and performance of marriage in Jagannath temple at Jagdalpur. The statement of the applicant was supported by witnesses namely Ramjaane Shrivastava (AW-2) and Smt. Suraj Yadav (AW-3). The respondent has not presented any evidence to rebut and contradict the evidence of the applicant side and ex-parte proceeding was taken against him at the stage of non-

applicant evidence. Therefore, the evidence present on record was sufficient to hold that she was a legally married wife of the respondent. Reliance has been placed on the judgment delivered by Hon'ble the Supreme Court in the matter of **Kamala V. M.R. Mohan Kumar**, 2018 SCC OnLine SC 2121 wherein it has been held by Hon'ble the Supreme Court that in the matter of maintenance case under Section 125 of the Cr.P.C. that strict standard of proof is not necessary for the reason that the case is of summary nature. Reliance has also been placed on the judgment of Hon'ble the Supreme Court in the matter of **Chanmuniya V. Virendra Kumar Singh Kushwaha and another**, (2011) 1 SCC 141 in which it is similarly held. Therefore, it is submitted that the order of the Court below suffers from infirmity which is not sustainable and the applicant is entitled for relief.

3. Learned counsel for the respondent opposes the submission made and the grounds raised in the revision petition and submits that the applicant has failed to prove that she is legally wedded wife of the respondent. The priest of the Jagannath temple has not been examined by her in evidence and also there is no other documentary evidence present before the Court below to show the proper legal performance of marriage. There is also no evidence to show that the applicant was living with the respondent as wife. Therefore, the learned Court below has not committed any error in the impugned order. Hence, the petition is liable to be dismissed.

4. The applicant had pleaded that her marriage was performed with respondent on 10-03-2004, regarding which she has brought evidence by examining herself and also by examining witnesses namely Ramjaane Shrivastava (AW-2) and Smt. Suraj Yadav (AW-3). Both these witnesses have stated that marriage of the applicant with the respondent was performed in their presence by the priest of the Jagannath temple at Jagdalpur. Their statement has remained unrebutted in their cross-examination. There is no evidence brought

by the respondent side to contradict the statement led by the applicant side, therefore, the statement in the evidence of the applicant had preponderance of probability in her favour. As it is held in **Kamala V. M.R. Mohan Kumar** (supra) and **Chanmuniya V. Virendra Kumar Singh Kushwaha** (supra), the principle is well established that in the case of 125 Cr.P.C. there no need of strict proof of marriage for the purpose of entitlement of maintenance, as it is required in the matrimonial cases and there had been no evidence to contradict the evidence of the applicant side from the respondent side. Therefore, it appears that the learned trial Court has committed error in not believing the evidence of the applicant side. Hence, on the basis of the evidence present it is found that the applicant has proved that her marriage was performed with the respondent and therefore, for the purpose of the case under Section 125 of the Cr.P.C. she was legally wedded wife of the respondent.

There is no denial from the respondent side that the applicant is being neglected by the respondent in her maintenance and that the respondent is man of means being employed in C.G. Armed Forces, therefore, he is having salaried income.

5. The respondent has admitted in his reply that he is getting salary of Rs.12,000/- per month. In the evidence given in reply the respondent has though made statement that he is already married and having children, but that has not been proved by him by bringing evidence in that respect. At this stage learned counsel for the respondent submits that in the matter of **Kalyan Dey Chowdhury V. Rita Dey Chowdhury Nee Nandy**, (2017) 14 SCC 200 Hon'ble the Supreme Court has held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent wife. Therefore, on that basis, I am of this view that one fourth of net salary can be granted to the applicant as maintenance under Section 125 of the Cr.P.C. Therefore, this revision petition is allowed and the impugned order is set aside. It is ordered

that the respondent shall pay monthly maintenance of Rs.3000/- to the applicant from the date of her filing the application for maintenance.

6. The petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Aadil