

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 1541 of 2019

Khirendra Shriwas, S/o. Jagdish Shriwas, Aged About 32 Years, R/o. Old Bus Stand, Behind the Lormi, Police Station, Dubaripara, Ward No. 05, Lormi, District - Mungeli Chhattisgarh. Working Place Bhilai P. P. Yard Unit No. 2, Near Railway Crossing, Bhilai - 3, District - Durg Chhattisgarh.

---- Applicant

Versus

Archana Shriwas (Yadav), W/o. Khirendra Shriwas, Aged About 32 Years, R/o. Mission Hospital Premises, Bilaspur, Police Station - Civil Line Tahsil and District - Bilaspur Chhattisgarh.

-----Respondent

For Applicant	: Mr. Bhaskar Payashi, Advocate
For Respondent	: Mr. Devendra Khobragade, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

27/01/2020

1. This criminal revision has been brought challenging the order dated 22.10.2019, passed by the learned Additional Principal Judge, Family Court, Bilaspur, District – Bilaspur (C.G.) in M.J.C. No.113/2018 granting monthly maintenance of Rs.8,000/- to the respondent.
2. It is submitted by the learned counsel for the applicant that the respondent had failed to prove the performance of legal marriage with the applicant. No documentary evidence was produced regarding the marriage and neither any Priest was examined to

prove the performance of marriage. Secondly, the impugned order has been assailed on this ground that the maintenance order is too much on the higher side. Reliance has been placed on the judgment of Supreme Court in case of **Savitaben Somabhai Bhatiya Vs. State of Gujarat & Ors.**, reported in **(2005) 3 SCC 636** on this point that expression “wife” as per Section 125 of Cr.P.C. means legally wedded wife. Therefore, it is prayed that the revision petition be allowed and the impugned order be set-aside.

3. On behalf of the respondent, it is submitted that the learned Court below has not committed any error in passing the impugned order. The respondent had proved her case by cogent and reliable evidence on the basis of which, it has been held that she is lawful wife of the applicant. Therefore, she has entitlement for grant of maintenance. Hence, the revision petition is liable to be dismissed.
4. I have heard the learned counsel for the parties and perused the documents placed on record.
5. Respondent – Archana Shriwas (A.W.-1) has stated that her marriage with applicant was love marriage, which was performed on 13.09.2014 in the temple at Dongargarh. She has stated that she was earlier married to one Jitendra Yadav, who expired in the year 2013. In cross-examination, she has denied that their marriage was not performed in the temple in the Dongargarh. She has stated that she does not know the Priest, who had performed the marriage. She had admitted that she is studying for nursing course and she has nowhere entered in the documents showing the name of the applicant as her husband. She is also admitted that while applying

for nursing course, she has filled in the application that she is unmarried. She has denied other adverse suggestion given to her by the applicant/non-applicant side.

6. Meena Yadav (A.W.-2) has stated in her examination-in-chief that acquaintance between the applicant and respondent continued for sometime and then both of them got married in the temple at Dongargarh. In cross-examination, she has stated that she is giving statement on the basis of the information given by the respondent. It is nowhere mentioned in the examination in chief or cross-examination that she was present at the time of performance of marriage of applicant with respondent.
7. Aheliya Khande (A.W.-3) has stated similarly and also stated that she was informed about the marriage by the respondent herself. She was also not present at the time of performance of said marriage of the applicant with respondent.
8. Khirendra Shrivastava (N.A.W.-1), the applicant himself has stated on oath that respondent is not his wife and he has never married her. He has clearly denied the statement of respondent regarding marriage in Dongargarh temple on 13.09.2004. Jagdish Shrivastava (N.A.W.-2) has supported his statement.
9. Respondent has not produced any documentary evidence. Although she has produced some photographs, which have been exhibited as articles and according to her statement, she is the person in the photographs. These photographs can not be admitted as direct proof for the reason that photographs are regarded only as copies. Further there is no other evidence in the form of documents

produced by the applicant. The only evidence of the respondent regarding marriage that she and the applicant was married in the temple at Dongarh on 13.09.2014. No persons have been examined on her behalf on this point that they have witnessed this marriage. Although there is no requirement of strict proof of marriage in the case under Section 125 of Cr.P.C. but even then there is requirement of sufficient evidence to show the performance of marriage and the cohabitation after marriage, on the basis of which, it could be regarded or assumed that the applicant and the respondent were leading married life. Therefore, the requirement of sufficient proof has not been made in this case. Ratio of law laid down by the Supreme Court in case of ***Savitaben Somabhai Bhatiya Vs. State of Gujarat (supra)*** is settled principle, therefore, in this particular case I am of this view that respondent had failed to prove that there is existing a marriage recognized under law between her and the applicant for the purpose of this case. Hence, the order impugned suffers from infirmity, which is incorrect, improper and against the provisions and settled principles of law, therefore, this order is not sustainable.

10. Accordingly, the revision petition is allowed and the order dated 22.10.2019, passed by the learned Additional Principal Judge, Family Court, Bilaspur, District – Bilaspur (C.G.) in M.J.C. No.113/2018 is set-aside.

Sd/-
(Rajendra Chandra Singh Samant)
Judge