

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 15.03.2021

Order Passed on : 26/05/2021

Cr.R. No. 516 of 2015

- Ramkrishan @ Kinnu, S/o :- Munai Singh, aged about 29 years, occupation :- Farmer, R/o :- Village – Amora, P.S. – Nandghat, Tahsil- Navagarh, District- Durg, C.G.

---- Petitioner

Versus

- Ramavtar, aged about 08 months, Natural Guardian :- Mother- Manibai @ Savitri Bai, W/o :- Ramkrishna @ Kinnu, R/o :- Village – Amora, P.S. – Nandghat, Tahsil – Navagarh, District- Durg, C.G.

---- Respondent

For Petitioner	: Mr. Hemant Gupta, Advocate.
For Respondent	: Mr. Vaibhav A. Goverdhan, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

26/05/2021

1. This Criminal Revision has been brought challenging the legality, propriety and correctness of the order dated 27.03.2015, passed in Miscellaneous Criminal Case No.165 of 2007 allowing the application of respondent and directing payment of Rs.1,000/- per month as maintenance until the respondent attains majority. Respondent is a minor child, who filed application under Section 125 Cr.P.C. through his mother against this applicant, praying for grant of maintenance on the ground that he is the biological son of this applicant, who was born as a result of physical relation of the applicant with the mother of the respondent and that respondent is a man of means and neglecting the

maintenance of the respondent. This application was contested denying the paternity of the respondent. That application has been decided by the impugned order holding that the respondent is the son of the applicant and on that basis, the order of maintenance has been passed.

2. Learned counsel for the applicant submits that there had been clearly a question of paternity of the respondent, which has not been clearly decided by the learned Family Court. The Family Court has relied upon the birth certificate only which is a document which can be created on the information given by any person and that application has been given by the mother of the respondent. Therefore, that was not a conclusive proof to determine the paternity.
3. Reliance has been placed on the judgment of this High Court in the case between **Chaturbhuji vs. Amar** reported in 2009 (3) C.G.L.J. 322, it is submitted that this Court has earlier held that evidence of mother of respondent and her witnesses is not sufficient to prove fact of any relation of the mother of the respondent with the petitioner and on that basis, the order of maintenance was quashed.
4. Reliance has also been placed on the order of this Court in Cr.R. No.250 of 2006 between Hem Sagar Patel; Vs. Ganga Sagar Patel decided on 08.04.2008 and the order of this Court in Cr.R. No.12/2009 between the parties Suresh Sahu Vs. Sumit Sahu decided on 19.04.2011, in which the maintenance order has been quashed on similar grounds. Therefore, it is submitted that the impugned order is erroneous and unsustainable which may be set aside.
5. Learned counsel for the respondent opposes the submissions of the learned counsel for the applicant and submits that the finding in the impugned order is based on evidence, which was brought by the respondent side and that evidence was found reliable by the learned

Family Court, hence, on that basis, the applicant cannot deny being father of the respondent. The case law cited by the applicant side are not applicable in this case. Hence, it is prayed that the revision petition may be dismissed.

6. In reply, it is submitted by the learned counsel for the petitioner that the paternity of the respondent has not been established in evidence. The finding in the impugned order is erroneous, which is under challenge in this Court. Therefore, the petitioner is entitled for relief.
7. Heard the learned counsel for parties and perused the documents present on record.
8. Considered on the submissions. The respondent had filed application under Section 125 of Cr.P.C. on 25.07.2005. After the submission of reply and evidence, the case was decided by the learned Family Court on 09.06.2008, by allowing the application and granting monthly maintenance of Rs.500/- to the respondent. This order was challenged in Criminal Revision No.437 of 2008 before this High Court in which the order dated 21.01.2009 was passed by setting aside the order of maintenance and directing the Family Court to consider on the document of compromise in terms of para 5 of the evidence of Mani @ Savitri Bai (A.W.-1). Subsequent to this, the learned Family Court has reconsidered on the application and passed the impugned order. The question raised in this Revision Petition is this that the paternity of the respondent was not proved. The evidence present in the record is required to be appreciated.
9. Mani Bai @ Savitri Bai (A.W.-1) has stated that she and the applicant had a love affair and they were meeting and having physical relation as a result of which, she became pregnant and gave birth to the respondent. As the applicant refused to take any responsibility, she

lodged F.I.R. against the applicant. She has also stated that a Panchayat meeting was held, in which the compromise took place. She has produced, the birth certificate of respondent which is Ex.A/1. Subsequent to the order dated 21.01.2009 in Cr.R. No.437 of 2008, the prosecutrix was again examined, in which she stated about the compromise application dated 15.07.2004 which was signed by her and the applicant and also stated that this compromise had taken place for the reason that she was having pregnancy from the applicant.

10. In cross-examination, Mani @ Savitri Bai (A.W.-1) has remained firm on statement regarding her pregnancy from the applicant that the respondent is child of the applicant. The questions have been put in cross-examination regarding the Panchayat and the witness has admitted about the Panchayat meeting and the document produced in writing, which was signed by the persons present. She has denied the suggestions that her pregnancy was not from the applicant.

11. Geeta Ram (A.W.-2) has been examined as a witness of the Panchayat meeting, he has stated that the applicant was present in the Panchayat and had admitted that Mani Bai @ Svitri Bai is having pregnancy from him regarding which the document was written on which she had signed.

12. In re-examination, he has again stated that the applicant had admitted before the Panchayat that he is the person from whom the Mani Bai was pregnant and also had admitted to have her in his house. In cross examination, this statement made by him has remained intact.

13. Kartik Ram (A.W.-3) is another witness of the Panchayat, who has made similar statement and his statement has remained intact in cross-examination.

14. Sant Ram (A.W.-4) is the uncle of the Mani Bai @Savitri Bai, he has also made similar statement and he has remained firm of his statement in his cross-examination.
15. Ram Krishna Verma (N.A.W.-1) has in his examination-in-chief denied his relationship with the Mani Bai and the paterernity of the respondent. In cross-examination, he has admitted that he had filed a Civil Suit praying for relief of declaration that the respondent is not his son and also admitted that the Civil Suit has been dismissed. He has admitted about his criminal prosecution for offence under Section 376 of I.P.C. in which he has been acquitted.
16. Cheddi Lal (N.A.W.-2) has supported the version of Ram Krishna Verma (N.A.W.-1) in his examination-in-chief. In cross-examination his statement has remained unrebutted but this witness is not the first person to make a statement of denial regarding the paternity of the respondent, which is certainly a fact in personal knowledge of the applicant and the mother of the respondent only. Therefore, his statement is based only on the information supplied by the applicant.
17. On appreciating, the evidence brought by both the side, it is found that the evidence brought by the respondent side has preponderance of probability, as the statement made by the mother of the prosecutrix has been supported by the witnesses of the Panchayat before whom the applicant made admission about his relationship with the mother of the respondent. The Criminal Case against the applicant has been filed as Annexure- P.1 and its perusal shows that the reason for acquittal of the applicant had been that the Court had held that the relationship of the applicant with the mother of the respondent was consensual. Another documentary evidence is Ex.P/6, which has been proved by the Geeta Ram (A.W.-2) regarding the minutes of the meeting held. Hence, it is

found that there is sufficient evidence present to hold that applicant is the biological father of the respondent. None of the parties made a claim to get the paternity examined through D.N.A. testing. The case laws that have been cited by the applicant have no application in the facts and circumstances that are present in this case, therefore, I do not find any substance in this Revision Petition which is dismissed.

18. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Monika