

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.R. No.463 of 2020

- Deepkant @ Golu Yadav S/o Rajendra Yadav Aged About 25 Years R/o Tetarkhuti Abhanpur, Jagdalpur, District Bastar, (In The Impugned Order The Address Is Mentioned As R/o Behind Chopda Rice Mill Rajiv Gandhi Ward, Jagdalpur, District Bastar)

---- Applicant

Versus

1. Smt. Meena Yadav W/o Deepkant Yadav Aged About 24 Years
2. Prashant Yadav S/o Deepkant Yadav, aged about 2 years, Minor Through Mother And Natural Guardian Smt. Meena Yadav (Respondent No. 1)
(Both are r/o Behind Commissioner Office, Ravindranath Tagore Ward, Jagdalpur, District Bastar, Chhattisgarh)

---- Non-applicants

For Applicant	: Mr. Prafull N. Bharat, Advocate.
For Respondents	: Mr. Pravin Kumar Tulsyan, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

12-03-2021

Heard.

1. This Criminal Revision has been brought challenging the correctness, veracity and propriety of order dated 23.12.2019, passed by the learned Family Court, Bastar at Jagdalpur, C.G. in M.J.C. No.101/2014, allowing the application of the respondents under Section 125 of Cr.P.C. and granting maintenance of Rs.2000/- to respondent No.1 and Rs.1000/- to respondent No.2 per month.
2. It is submitted by the learned counsel for the applicant that the impugned order is erroneous and against the facts of the case. It is the

statement in application under Section 125 of Cr.P.C. of the respondents, that the marriage of applicant with respondent No.1 was performed on 06.06.2012, whereas the respondent No.2, who is the son of respondent No.1 and the applicant and was born on 20.08.2012, that is just after the two months of the marriage. Hence, there is nothing to presume that the respondent No.2 had been born out of the wedlock. The applicant had contested the plea of marriage in his reply and produced evidence in that respect. The respondent No.1 had lodged one F.I.R. against the applicant under Section 498(A) of I.P.C., for which the applicant was prosecuted in Criminal Case No.47 of 2014. Vide judgment dated 15.02.2019, the applicant has been acquitted and it was held in that judgment by the judicial Magistrate First Class, Bastar at Jagdalpur, C.G. that the marriage of the applicant with the respondent No.1 was not found proved, therefore, there is a finding of the Court of Law on the point of marriage as claimed by the respondent No.1, which cannot be ignored.

3. Respondent No.1 has failed to prove the performance of marriage, which is reflected from the admissions made by the applicant witnesses, namely Mahadev (A.W.-2) and Smt. Babyana Hemrom (A.W.-3). The learned Family Court has erroneously discarded the fact of acquittal of the applicant in the case against him under Section 498 (A) of I.P.C., Hence, the impugned judgment suffers from grave infirmity which is liable to be set aside. Hence, it is prayed that the petition may be allowed.
4. Learned counsel for the respondents opposes the submissions and submits, that the impugned order under challenge before this Court is not final order. The applicant had filed review petition against the

impugned order, that has been decided by the order dated 18.02.2020 in M.J.C. No.03/2020 and dismissed. The order in review petition has not been challenged, therefore, there is a finality of that order. Rebutting the other submissions made by the learned counsel for the applicant, it is submitted that the proof of marriage of the applicant with the respondent No.1 has been sufficiently brought by the respondent No.1 before the Family Court, on which the conclusion has been drawn. The other evidences have been pleaded and proved by the respondent No.1 regarding the paternity of the respondent No.2 and that has remained unrebutted. Therefore, the impugned order does not suffer from any infirmity. Hence, this revision petition is liable to be dismissed.

5. In reply, it is submitted by the learned counsel for the applicant that the applicant has deliberately not challenged the review order, because any review is not permitted under Section 362 of Cr.P.C. Therefore, the order under Section 125 of Cr.P.C. of the Family Court could not have been reviewed.
6. Considered on the submissions. Respondent No.1- Meena Yadav (A.W.-1) has given a detailed statement about performance of her marriage with the applicant and about her previous relationship and also her pregnancy at the time of marriage including other facts. That statement has remained unrebutted in her cross-examination. Mahadev (A.W.-2) is the priest of the Karangi Shiv Temple, who has given statement about performing the marriage of respondent No.1 with the applicant. He has not been able to give other details, but his statement that he has performed marriage of the respondent No.1 with the applicant has remained unrebutted.
7. Babyana Hemrom (A.W.-3) was in charge of the Women Cell of Police

Station, Jagdalpur, who is a sub-inspector of police. She has dealt with the complaint filed by respondent No.1. She has stated that the applicant appeared before her and stated that he is husband of respondent No.1, she has also proved that the applicant document Ex.P/24 to be in the handwriting of the applicant. Although, there is admissions in her cross-examination that she did not know the applicant before and she did not make any inquiry about the identity. But her other statement regarding the document Ex.P/24 has not been put to any question in her cross-examination. The statement of the applicant before the Family Court is only the statement of denial.

8. The judgment of acquittal of the applicant in case against him under Section 498 (A) of I.P.C. was cited before the learned Family Court but the copy of judgment was not produced, therefore, the learned Family Court has not given any consideration in the impugned order. Further, that judgment was produced in the review application which has been decided by the order dated 18.02.2020 in M.J.C. No.03/2020 and dismissed. That review petition is not under challenge before this Court, apart from that, it is the settled view that the decision in Criminal Court is not binding on a Civil Court.
9. The proceeding under Section 125 of Cr.P.C. is termed as a quasi Civil Proceeding. As the claim of maintenance is a personal right and the provision is incorporated in the Code of Criminal Procedure under Section 125. Hence, in such a case, the Court while exercising the power for granting relief to a person acts in exercise of civil jurisdiction. This being the situation under law, I am of this view that the finding of the learned Family Court, which is based on the evidence present in the proceeding, does not need any interference, hence, it is held that the

respondent No.1 has clearly proved the factum of her marriage with the applicant and also that the respondent No.2 is the son of this applicant. After considering on all the statements and the legal aspects of the case, I am of this view that the impugned order is sustainable, which has been correctly passed and there is no illegality committed. Hence, this revision petition is dismissed at the motion stage.

10. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika