

HIGH COURT OF CHHATTISGARH, BILASPUR**Order Reserved on 29.11.2021****Order Delivered on 17.12.2021****CRR No. 1316 of 2019**

- Mangatu Nag, S/o Jhitru Nag, aged about 42 Years, R/o Koypal, Police Station Darbha, District Bastar, Chhattisgarh.

----Petitioner**Versus**

- Tabo Mourya, W/o Mangatu Nag, aged about 33 Years, R/o Village Koypal, Police Station Darbha, District Bastar, Chhattisgarh.

---- Respondent

For Petitioner	Shri Siddharth Rathod, Advocate.
For Respondent	Shri Pravin Kumar Tulsyan, Advocate.

Hon'ble Shri Justice Gautam Chourdiya**C A V Order**

1. The instant revision has been filed under Section 19(4) of the Family Court Act against the order dated 28.08.2019 passed by the Family Court, Bastar place Jagdalpur, C.G. in MJC Case No.22/2018 whereby respondent has been granted maintenance @ Rs.1,800/- per month from the date of order.
2. Learned counsel for the petitioner submits that the Court below was not justified in granting maintenance to the respondent in view of the material available on record. He submits that trial Court has wrongly given a finding that the respondent is the legally married wife of the present petitioner. He also submits that the respondent has not

produced any document regarding her marriage with the petitioner nor any independent witness was examined by her, therefore, in these circumstances, the impugned order is liable to be set aside.

Reliance has been placed on the judgment of Hon'ble Supreme Court in the matter of ***Yamunabai Anantrao Adhav vs. Anantrao Shivram Adhav and another***, reported in **(1988) AIR (SC) 644**, the judgment of Madhya Pradesh High Court (Indore Bench) in ***Sakariya vs. State of Madhya Pradesh***, **(1991) MPLJ 878**, and the judgment of Calcutta High Court in the matter of ***Shibsankar Samanta vs. Smt. Sobhana Samanta***, reported in **(1992) CriLJ 2196**.

3. On the other hand, learned counsel for the respondent submits that the respondent is a tribal woman and belongs to the remote area i.e. Bastar. He submits that before 2018 respondent and petitioner were living together as husband and wife but after 2018 i.e. after nine years of marriage, petitioner started quarreling with respondent, he refused to live with respondent and after some time he deserted her. Therefore, respondent is living separately and she has no source of income to maintain herself. So, the order passed by the Family Court in favour of respondent is just and proper and needs no interference by this Court.

Placing reliance on the judgment of Hon'ble Supreme Court in the matter of ***Pyla Mutyalamma Alias Satyavathi vs. Pyla Suri Demudu and another***, reported in **(2011) 12 SCC 189**, it is submitted that if the husband and wife were living together for a

considerable period and there is a positive finding in favour of the respondent/wife as to the marriage, the High Court in revision cannot interfere with the said finding and cannot reassess the evidence to substitute its own findings as it is pre-eminently a question of fact.

4. Heard learned counsel for the parties.
5. It is not disputed that present petitioner married another woman namely Janki Bai in the year 2018 and this fact is admitted by counsel for the petitioner in his argument. Prior to 2018, respondent claimed to be living as a wife of the present petitioner. She has also stated in her deposition that after the marriage performed in Dantewada Temple, they were living together as husband and wife and after nine years of their matrimonial life, petitioner started quarreling with her, therefore, she was living separately in her parental home. Thereafter, petitioner married another woman when she went to her parental home.
6. True it is that the petitioner performed marriage with Janki Bai in the year 2018 and to substantiate the said pleading, counsel for the applicant has filed certain documents i.e. marriage certificate by Gyatri Pariwar Trust, Jagdalpur, District Bastar, marriage photographs and ration card of his family showing Janki Bai as his wife as also the copy of Aadhar Cards as Annexures- A-2 to A-5. Looking to the age of the petitioner i.e. 42 years and the admitted fact that he performed marriage with Janki Bai in 2018, the statement of respondent appears to be reliable that before 2018 she

was living with the petitioner as his wife and after 9 years of marriage on being deserted by the petitioner she started living at her parental home. The deposition of respondent is supported by the statement of her father i.e. PW-2 Jatiya. Both of them remained firm in their cross-examination and stated that as many as 20 people were present when the respondent was married to the petitioner in a temple. A suggestion was also given by the petitioner's counsel to PW-1 Tabo Mourya/respondent during cross-examination that she lived with the petitioner only for a few days, which was denied by her and she stated she resided with him for nine years. Thus, considering the entire depositions of PW-1 Tabo Mourya/respondent and PW-2 Jatiya as also the evidence of NAW-1 Mangatu Nag and NAW-2 Komal Singh Kashyap, the fact that the respondent is an illiterate lady residing in the remote village area of Bastar, she has categorically stated that she was married to the petitioner in a temple and lived with him as his wife for nine years, though she cannot mention any particular date of her marriage, this Court does not find any illegality or perversity in the impugned order granting maintenance in favour of the respondent.

7. The argument of counsel for the petitioner that suggestions put to the witnesses cannot be taken as evidence has no substance because it is a well settled principle of law that the nature of proof of marriage required for a proceeding under Section 125 Cr.P.C. need not be so strong or conclusive as in a criminal proceeding to establish the offence under Section 494 of IPC, since the object of Section 125 Cr.P.C. is to afford a swift remedy, and determination by

the Magistrate as to the status of the parties is subject to a final determination of the Civil Court. Hence, when the husband denies that the applicant is not his wife, all that the Magistrate has to find in a proceeding under Section 125 of Cr.P.C., is whether the evidence led raises a presumption that the applicant was the wife of the respondent. That would be sufficient for the Magistrate to pass an order of granting maintenance. The judgments relied upon by counsel for the petitioner are not applicable to the facts of the present case and as such of no help to him.

8. Thus, considering the overall facts and circumstances of the case, the oral and documentary evidence available on record, the positive finding in favour of marriage between the parties given by the Family Court, keeping in view the decisions of the Hon'ble Supreme Court in ***Pyala Mutyalamma Alias Satyavathi*** (supra), this Court finds no substance in the present revision petition for interference. Accordingly, the revision petition is dismissed.

Sd/-
Gautam Chourdiya
Judge