

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1404 of 2019

Dev Narayan Tiwari, S/o Shri Ramratan Tiwari, Aged About 50 Years
(Retired Principal), R/o Purgaon, District- Balodabazar, Police Station-
Bilaigarh (C.G.)

--- Applicant

Versus

1. Smt. Vijay Laxmi Tiwari, Aged About 43 Years, Alleged to be W/o
Shri Dev Narayan Tiwari.
2. Ku. Shivani, D/o Late Suresh Tiwari, Aged About 9 Years
Through Mother Vijay Laxmi Tiwari,

Both R/o Purgaon, District- Balodabazar, Police Station-
Bilaigarh (C.G.)

Present Address: C/o Jitendra Kumar Tiwari, Kho Kho Para,
Danteshwari Chowk, Purani Basti, Raipur, District- Raipur (C.G.)

--- Respondents

For Applicant : Mr. Anand Shukla, Advocate.

For Respondents : Mr. A.D. Kuldeep, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

04/02/2021

1. This revision petition has been preferred against order dated
18.10.2019 passed by the learned First Additional Principal
Judge, Family Court, Raipur (C.G.) in MJC Case No. 407/2018,
allowing the application filed under Section 125 of the Cr.P.C. in
favour of the respondent and directing payment of monthly
maintenance of Rs. 3500/- to the applicant.

2. Learned counsel for the applicant submits that the respondent has filed an application under Section 125 of the Cr.PC. on the ground that her marriage with the applicant was performed on 31.05.2017 at Dudhadhari Math, Raipur. Subsequent to that, while her residing with the applicant, she was tortured for demand of dowry and deserted by the applicant, who is not taking care of her maintenance. The respondent had contested the application denying marriage with respondent No. 1. Learned trial court has held in the impugned order, that respondent No. 1 is the married wife of the applicant, however, it is held that respondent No. 2 is not the daughter of this applicant. After giving other findings in favour of respondent No. 1, order of maintenance has been passed.
3. Learned counsel for the applicant submits that no marriage of the applicant was ever performed with respondent No. 1. In fact, respondent No. 1 was engaged for house hold help by the applicant on the basis of monthly payment. Solemnization of marriage of respondent No. 1 with the applicant, has not been proved by the evidence of the respondent side, as no certificate has been produced regarding marriage whereas, respondent No. 1 has mentioned in the application that marriage was performed in Dudhadhari Math, which is a registered trust. Therefore, on performance of any marriage, a certificate is usually issued by the registered trust. The oral evidence of respondent No. 1 has been clearly rebutted by the oral evidence of the applicant side.

4. The applicant had exhibited copy of ration card as Ex. D/1C, which shows that husband of respondent No. 1 is Late Suresh Tiwari. Panchnama of Gram Panchayat, Purgaon, has also been produced as Ex. D/2C, in which, it has been certified that the applicant has not performed marriage after death of his wife.
5. It is further submitted that the finding in favour of respondent No. 1, has been given only on the basis of some photographs produced, which have not been exhibited in the evidence produced by respondent No. 1. Therefore, the same could not have been considered as any evidence. Further, there is no other evidence produced to show authenticity of the photographs. Hence, the photographs were not the evidence of any sort. Therefore, the marriage of respondent No. 1 with the applicant, was not proved. The finding on this point is erroneous. It is prayed that this revision petition may be allowed.
6. Learned counsel for the respondents opposes the submission made by the applicant submitting that marriage of respondent No. 1 with the applicant has been duly proved by the statement of respondent No. 1 herself, which has been remained unrebutted in examination-in-chief as also by the witnesses, who were present at time of performance of marriage. It is not denied that respondent No. 1 was previously married to one Suresh Tiwari and widowed subsequently. Therefore, the earlier marriage of respondent No. 1 was not in existence and she was eligible to perform second marriage. The learned Family Court has not committed any error by making reference to the

photographs of the marriage, which was duly produced for perusal in the court. The strict proof of marriage for the purpose of Section 125 of the Cr.P.C. is not required, therefore, the evidence, which has been brought by respondent No. 1 was sufficient in the finding given by the learned Family Court, which is not assailable. It is prayed that this revision petition may be dismissed.

7. I have heard learned counsel for the parties and perused the documents placed on record.
8. Considered on the submissions made by the counsel from both the sides. Respondent No. 1- Vijay Laxmi Tiwari examined herself as PW-1 and she has stated about performance of her marriage with the applicant on 31.05.2017 at Dudhadhari Math Raipur in presence of family members from both the sides and friends. This statement of hers, has not been rebutted in cross-examination and she specifically denied the statement of the applicant side that she was engaged for house hold help in the house of the applicant. L.P. Pandey (PW-2) and Vikash Sharma (PW-3), both have supported this statement stating that they were present at the time of performance of this marriage and their statement has also remained unrebutted in their cross-examination.
9. Applicant- Dev Narayan Tiwari (DW-1) himself stated that he engaged respondent No. 1 for house hold help for monthly salary of Rs. 1000/- per month. In cross-examination, he has not

made any admission of the statement given by the respondent side. Jhularam Dewangan (DW-2) has made similar statement in examination-in-chief as also in the cross-examination and has remained un rebutted. Similar statement has been made by Jitendra Sahu (DW-3).

10. On appreciating the evidence brought from both the sides, it appears that respondent No. 1 has made statement about marriage and about her residence in village- Lavan, Kasdol, District- Balodabazar for few days until she was deserted by the applicant. The statement about lodging complaint in Mahila Thana, Raipur and compromise subsequent to that, has not been specifically rebutted in the cross-examination, neither has been replied otherwise in the statement or in the evidence of the applicant side.
11. On considering the logic in the statement of the parties, it would be seen that the applicant and the applicant had been resident of Purani Basti, Raipur, when she claims about performance of marriage with the applicant, whereas, the applicant is residence of Purgaon, Lavan, District- Balodabazar. His statement that he had engaged respondent No. 1 as house hold help in his house, does not appear to be logical, as he himself has admitted in cross-examination that village- Purgaon is at distance of about 150 Km. from Raipur. A house hold help to be engaged is usually a person of locality. Hence, this statement of the applicant side has remained unexplained.

12. In the application under Section 125 of the Cr.PC., the requirement of proof is at the level of preponderance of probabilities. The statement of respondent No. 1 in the case before the Family Court, has held a ground, even if, the photographs that have been produced and perused, are to be disregarded as any evidence, as per requirement of court in the case. The evidence of respondent side appears to be logical, whereas the ground taken by the applicant appears to be illogical. Hence, it can be held that the respondent has proved her case on the basis of preponderance of probabilities.
13. Hence, I am of this view that the learned Family Court has not committed any error in passing the impugned order. The revision petition appears to without any merits, which is liable to be dismissed.
14. Accordingly, the instant revision petition is dismissed at motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge