

IN THE COURT OF THE II ADDITIONAL SESSIONS JUDGE: EAST  
GODAVARY : : RAJAHMUNDRY.

Present:- Sri C.Rambabu, BA., LLB., II Addl. Sessions Judge.

Wednesday, the 25th day of July, 1990.

CRIMINAL REVISION PETITION No.97/89

Between:

1. Pakalapati Lakshmi,  
W/o. Suryanarayana Raju,
2. Pakalapati Jagiraju,  
S/o. Suryanarayana Raju,  
Maredumilli (being minor  
represented by mother-  
1st Revision Petitioner)

... Revision Petitioner

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1. Pakalapati Suryanarayana Raju,  
S/o. Jayaraju, Maredumilli.
2. The State.

... Respondent.

Revision Petition dt/30-10-1989 filed under Sec.397 Cr.P.C. praying to set aside the Order dt/31-7-1989 passed by the Sub-Divisional Magistrate, Rampachodavaram in M.C.No.6/88.

This Revision Petition coming on 19-7-1990 for final hearing before me, in the presence of Sri S.G.Rama Rao, Advocate for the Revision Petitioner, and of Sri M.Sesha chari, Advocate for 1st Respondent and Sri K.C.Bhanu, Addl. Public Prosecutor for the State, and the matter having stood over for consideration, the Court delivered the following:

### ORDER

This is a Revision preferred against the order passed by the Sub-Divisional Magistrate, Rampachodavaram, dated 31-7-1989 in M.C.No.6/88 by the aggrieved petitioners.

2. The brief facts which lead to this Revision are, the Revision Petitioners, claiming themselves as wife and son of the 1st Respondent herein, filed M.C.6/88 under Sec.488 Cr.P.C. claiming maintenance of Rs.300/- and Rs.200/- respectively as their maintenance was neglected by the 1st respondent.. It is averred in the petition that the 1st petitioner and the 1st respondent cohabitated for four years and begot the 2nd petitioner and later he developed illegal contacts with one Nagamani and that the 1st respondent agreed before the elders that he would marry the 1st petitioner lawfully and in spite of this assurance he married the said Nagamani and neglected maintenance to the petitioners.

3. The 1st respondent herein has resisted the claim denying the allegations of cohabitating with the 1st Revision petitioner for four years keeping her as his concubine and begetting the 2nd respondent. It is averred that the petition has been filed on account of political factions in the village as the Respondent's father was helping one Matla Abbai Reddy in the litigation against the 1st petitioner's father Matla Jaggi Reddy and that dispute pertains to grant of Ryotwari patta for some land situated in Marodumilli and that litigation is being continued by the 1st petitioner's brother after the demise of his father and to dissuade the 1st respondent this false M.C. has been filed. It is also averred that because of the election disputes also the case has been falsely foisted against him, and that the 1st petitioner is a woman of very loose character and one Jiyapureddy married the sister of the 1st petitioner and this petitioner was living along with her sister and is having illicit intimacy with the said Jiyapureddy and she appear to have given birth to a son through him and that there is no relationship whatsoever between the 1st respondent and the 1st petitioner, and that the 1st petitioner cannot maintain the application as she is not the wife of the 1st respondent.

4. Before the lower Court the petitioners got examined herself and two others as PWS. 1 to 3 and the 1st respondent examined himself and two others as RWS. 1 to 3.

5. The learned Sub-Divisional Magistrate, after perusing the evidence and hearing the arguments found that the 1st petitioner is not the legally wedded wife of the 1st respondent and that there is no proof of the 2nd petitioner born to the 1st respondent and dismissed the petition.

6. Aggrieved by the said dismissal, the present Revision is filed.

7. Both sides are heard.

8. The only Point that arise for consideration is-  
"Whether the claim for maintenance either by the 1st revision petitioner or by the 2nd revision petitioner is maintainable against the 1st respondent?"

9. The very basis of the claim for maintenance is living with the 1st respondent with an assurance of marriage and begetting the 2nd petitioner. But unfortunately, the Revision Petitioners have not been able to establish the said agreement and also parentability of the 2nd petitioner. ~~xxx~~ Sec. 488 Cr.P.C. gives a right to the wife or the illegitimate child to claim maintenance against the husband and father when they are incapable of maintaining themselves and that too on proof of neglect or refusal. So, the primary requisite to claim maintenance is the petitioners must be wife and legitimate or illegitimate child. As per the averments of the petition as well as the evidence the 1st petitioner has cohabitated with the 1st respondent not as a wife. <sup>When</sup> ~~But~~ she is not a wife, she is not entitled to claim any maintenance. It is not proved that the 2nd petitioner is the illegitimate son born to the 1st petitioner through the 1st respondent. Except the self-serving evidence of P#1 there is no other evidence to show that the 2nd petitioner was born to the 1st petitioner through the 1st respondent.

10. It is contended by the Revision Petitioners' counsel that no woman in India would come forward and claim a person as her husband and father of her child and the very fact that the petitioners herein have come up with true facts show their innocence and if really the revision petitioners are interested to claim maintenance they could have alleged falsely a marriage between the 1st petitioner

and the 1st respondent. For a logical hearing this sounds to be reasonable. But we have to keep in mind that the petitioners belong to tribal community where it is permitted in their society to live with a man for sometime without any marital ties. Sec. 488 Cr.P.C. is intended to provide maintenance for the unfortunate wives who are neglected and also legitimate and illegitimate children born to the said woman. When there is no proof of marriage or parentability which are the basis for claiming maintenance the only course open to the Court is to deny the claim of maintenance.

11. In this regard the Respondent's counsel filed a decision reported in A.I.R. 1954 Madras 513 to the proposition that a concubine or mistress cannot claim maintenance even if there is any agreement or consent for the person to pay maintenance. In the present case also the petitioners claimed that there was agreement before elders of the community. Ofcourse it is not forthcoming and in the evidence of Pw.1 herself it is proved that there was no such dispute raised. Even for argument sake when the 1st respondent has admitted his liability to pay maintenance to the Mistress, still it is not enforceable under law as a Mistress or concubine are not covered by Sec. 488 Cr.P.C. and the right is given only to a wife who is legally married.

12. The learned counsel also relied upon another decision reported in A.I.R. 1942 Madras.251 to the proposition that a claim for maintenance by a married woman against a third person as mother and guardian of a minor child alleged to have been born out of illegal intimacy with that third person, the admissions of paternity are irrelevant if woman fails to prove non-access to her husband when child could have been begotten.

13. The facts of this case are not akin to the present case. But the ratio decidendi laid down by their Lordships show that mere cohabitation with one woman and that woman begetting a child, by itself is not a proof even if that person admits the parentability and it is open to the woman to further establish that except the accused person no other male person had got any access to her in begetting the child. In the present case, the parentability itself is denied. Except stating that the 1st petitioner lived with the 1st respondent for four years and begetting the 2nd petitioner, there is no other evidence corroborating and establishing the parentability. In the absence of any such evidence, the 2nd petitioner is also not entitled to claim any maintenance as it cannot be said that he is the legitimate son of the 1st respondent. In this regard, the learned counsel for the 1st respondent also invited this Court's attention to A.I.R. 1960 Kerala 110 wherein their Lordships asserted that there must be corroboration to the evidence of the interested testimony of the woman as to the parentability and it has to be proved as any other fact. This principle also applies to the present case in all its force.

14. So, for the foregoing reasons, it is clear that the Revision Petitioners have failed to establish themselves as the wife and illegitimate child of the 1st respondent and consequent on their failure they are not entitled to claim maintenance, and I find this point accordingly.

15. In the result, I dismiss the Revision, confirming the order of the lower court, as I do not see any error committed by the learned Sub-Divisional Magistrate in passing the impugned order.

Dictated to the shorthand-writer, transcribed by him, corrected and pronounced by me in open Court, on this the 20th day of July, 1990.