

**(2010) 08 JH CK 0046**

**Jharkhand High Court**

**Case No:** Criminal Revision No. 554 of 2010

Krishna Chandra Mahato

APPELLANT

Vs

Smt. Ali Mahato and Minor  
Kumari Chandmani Mahato

RESPONDENT

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**Date of Decision:** Aug. 25, 2010

**Citation:** (2011) 2 DMC 128

**Hon'ble Judges:** Jaya Roy, J

**Bench:** Single Bench

**Advocate:** J. Mazumdar, for the Appellant; none, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Jaya Roy, J.

Heard learned Counsel for the Petitioner and learned Counsel for the opposite parties.

2. Petitioner has filed this revision application against the judgment dated 27.04.2010 passed by the Principal Judge, Family Court, Chaibasa in Miscellaneous Case No. 07 of 2007 whereby the court below has directed the Petitioner to pay Rs. 2500/- as maintenance to the opposite party No. 2, Minor Kumari Chandmani Mahato till she is married. The order of maintenance was directed to be paid from the date of application dated 05.05.2007. Besides that, a sum of Rs. 4000/- has also been allowed by way of expenses of the proceeding. The mode of payment of the maintenance allowance is that the same shall be paid by 15th day of every month positively.

3. Learned Counsel for the Petitioner submits that the court below has not considered the evidence of the witnesses produced by the Petitioner in respect of the minor daughter of applicant No. 1. Petitioner has also denied opposite party No. 2, minor, as his daughter in his show cause. Petitioner has specifically denied the factum of marriage with the applicant-opposite party No. 1. He also denied that

opposite party No. 2 is his daughter. He contended that opposite party No. 2, is neither his legitimate nor illegitimate daughter and therefore, he is not liable to maintain opposite party No. 2. Learned Counsel further submitted that the court below has failed to appreciate the documents produced by applicant opposite party No. 2 i.e. school register wherein the name of the father of opposite party No. 2 has been mentioned as Krishna Chandra Mahato, the Petitioner. Admittedly opposite party No. 2 was admitted in the school after filing of the case and therefore the court below ought not to have relied upon such document. It is further argued on behalf of the Petitioner that the amount of maintenance so granted to opposite party No. 2, minor daughter, is also very unreasonable in proportion to the income of the Petitioner.

4. In this case, I am not concerned with the issue as to whether the opposite party No. 1 is a legally married wife of the Petitioner or not, as no argument has been advanced on this very point by the Petitioner counsel. The main issue in this case is regarding grant of maintenance to opposite party No. 2, minor daughter. It has come in the impugned order that the applicants have examined four witnesses in support of their case. On the other hand, Petitioner has examined three witnesses including himself. P.W. 3 is the applicant No. 1 herself, She has very specifically stated that Chandmani is her daughter and her father is Krishna Chandra Mahato, the present Petitioner. She has stated in her evidence that the Petitioner was already married but as he had no son, he assured that he would marry applicant No. 1 and on this assurance, Petitioner started visiting her house and she became pregnant. She has accepted that the Petitioner, no doubt was behaving like her husband but never married her. She has stated that due to cohabitation a daughter, applicant No. 2, was born. Since, the Petitioner did not marry her, a Panchayti was held in the village in which the Petitioner did not appear. The applicant No. 1 then went to the house of the Petitioner where she was assaulted and driven out for which the applicant No. 1 lodged a criminal case against the Petitioner. P.W.2 has also stated in his evidence that the Petitioner, on the promise of marriage, co-habited with applicant No. 1 as a result of which applicant No. 2, minor daughter was born. Likewise, other witnesses examined on behalf of the applicant No. 1, have supported the case of the applicants. Applicant No. 1 has also filed certain documents i.e. birth certificate of applicant-opposite party No. 2 issued by Deputy Superintendent of Sadar Hospital in which the name of the father of applicant No. 2 is mentioned as Krishna Chandra Mahato, the Petitioner. This document has been issued on 24.05.2006 and the present case has been filed on 05.05.2007. Therefore, it can not be said that the said document is forged or manufactured only for the purpose to prove the case of the applicants. The said document has been issued by the Competent Authority.

5. The Petitioner has also examined three witnesses including himself as O.P.W.3. Petitioner, in his examination-in-chief, has stated that both the applicants are not connected with him. Smt. Ali Mahato, applicant No. 1 is the wife of Gangadhar

Mahato and Chandmani Mahato, applicant No. 2 is the daughter of Gangadhar Mahato. The Petitioner, in his cross examination, has clearly stated that his name was mentioned in school register as the father of Chandmani Mahato which is within his knowledge. He has further stated that Chandmani Mahato was admitted in the school after filing of the present case and this fact though was in his knowledge, but he never raised any objection against entry of his name in the school regarding the admission of Chandmani Mahato showing him as her, father which clearly proves that he has accepted Chandmani Mahato as his daughter.

6. The court below, after considering the entire oral and documentary evidence adduced by both the parties, has come to a finding that the applicant-opposite party No. 2 is the daughter of the Petitioner and therefore he is liable to maintain her. In view of the elaborate discussion made by the trial court in its judgment, I do not find any reason to interfere with the finding that Chandmani Mahato is the daughter of the Petitioner, may be legitimate or illegitimate.

7. So far the amount of maintenance is concerned, it has come in the impugned order that all the witnesses examined on behalf of the applicant-opposite party No. 1 have stated that the Petitioner is carrying business of Kendu leaves and Straw. It has further come in the evidence of the witnesses that the Petitioner possesses a pond for fishing. Further, P.W.2 has stated in his cross-examination that the Petitioner uses to purchase straw from him and other persons and thereafter sells the same in the market. It has come in the impugned order that the applicant-opposite party No. 2 is a student of Class IX and she has no source of income of her own. Admittedly, Petitioner is not maintaining her. I further find that the trial court after elaborate discussion of evidence of the witnesses produced on behalf of the Petitioner has come to a finding that the Petitioner has sufficient income from a number of sources. For better appreciation Paragraph 12 of the impugned judgment is quoted herein below:

Now, I come to the evidence of opposite party witnesses in respect of income of the opposite party. OPW-2, Tarni Sen Nayak, has admitted in his cross examination, para-14, that opposite party Krishna Chandra Mahtao carries on business of "kendu" leaves and he has landed property for cultivation. But he has expressed his inability to say regarding the income of the opposite party. But at the same time, in his cross examination, para-15, he has specifically stated that 10/12 labourers are employed for manufacturing Bidi and 8/10 labourers are employed for the purpose of cultivation., This evidence corroborates the evidence of Petitioners' witnesses that the opposite party carries on business of manufacturing Bidi and has sufficient cultivable lands. Further, the opposite party himself, Krishna Chandra Mahato, OPW-3, has also admitted in his evidence, para-3, that he earns Rs. 5000/-/Rs. 7,000/-yearly from cultivation, but at the same time he tried to conceal the factum of business of "kendu" leaves. This fact goes to show that he is not a truthful witness. In his cross examination, para-6, he has stated that Tarni Sen Nayak, his witness, is

known to him and he has knowledge regarding his business and in para-7 of his cross examination, he admits that earlier he was running a Bidi manufacturing factory, but the factory has ceased to work for the last 11/2 years. This fact goes to show that the opposite party has sufficient means to maintain the Petitioner No. 2 and he rejects and refuses to maintain her, However, he admitted in his examination-in-chief, para-4, that still he has two wives, one son and one daughter to maintain and one daughter has been married. Both the points are answered accordingly.

8. After considering the entire facts and evidences and the submissions of the parties, I do not find any illegality in the impugned judgment. In my considered opinion, the order of maintenance granted to opposite party No. 2, minor daughter of the Petitioner, is quite reasonable, just and proper. Accordingly, this revision application, having no merit, is dismissed.