

(2010) 09 JH CK 0154

In the Jharkhand High Court

Case No : Criminal Revision No. 672 of 2010

Awadhesh Choudhary

APPELLANT

Vs

The State of Jharkhand and Parvati Devi

RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2011) 3 RCR(Civil) 189 : (2011) 3 RCR(Criminal) 65

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jaya Roy, J.—Heard learned Counsel for the Petitioner and learned Counsel for the opposite parties.

2. The Petitioner has filed this revision application against the order dated 19.5.2010 passed by the Principal judge, Family Court, Palamau at Daltonganj in Misc. Case No. 36 of 2007 in an application filed u/s 125 of the Code of Criminal Procedure by the applicant-wife.

3. In brief, the case of the parties is that the applicant-wife had filed an application u/s 125 of the Code of Criminal Procedure for directing the Petitioner-husband to pay maintenance allowances for herself and also for her children. She has further stated that she is unable to maintain herself and her children and she has no source of income. She has stated that she is a married wife of the Petitioner Awadhesh Choudhary according to Hindu rites and customs. After marriage she went to her in-laws house and lived there as husband and wife. Thereafter, a son and a daughter were born out of the said wed-lock. It is alleged that after some time Petitioner-husband started assaulting and abusing her and her children. Thereafter, that the Petitioner took her ornaments and cloths and drove her out from his house along with her children. She has further stated in the petition that she is now fully dependent on her father as she has no source of

income. She has stated that her husband is a man of means having lands, house and shops from which he earns good amount of money per month. It has been further stated that the Petitioner-husband is a teacher in a government school and gets a handsome salary, approximately Rs. 20,000/- per month.

4. After notice the Petitioner appeared and filed show cause stating that the petition filed by the applicant-wife u/s 125 of the Code of Criminal Procedure for maintenance is not maintainable because she is not legally married wife, rather she was married with Saudagar Choudhary and from their wed-lock, the aforesaid son and daughter were born. He has denied the aforesaid two children of his own. He has also denied all the allegations made in the aforesaid application filed by the applicant but he has admitted that he is a teacher in a government school. He has also admitted that he has got some land and a shop at his village, He has further stated that at present the shop is vacant and he is not earning anything from the said shop. He has alleged that the applicant has filed this case only for squeezing money from him. He has stated that he is a married man. The name of his wife was Laxminia Devi from whom he has got son aged about 35 years and two daughters who are now married.

5. In support of her case, the applicant has examined three witnesses including herself. P.W. 1 is applicant. She has very specifically proved her case stating that she was married with the Petitioner in the year 1988. From the said wed-lock a son and a daughter were borne. After birth of her daughter, the Petitioner-husband started assaulting her and ultimately in the year 2006 he drove her out from the house with her children and now she is living at her parents house and the husband is not maintaining her and her children. She has further stated in her evidence regarding the income of the Petitioner-husband. In her cross-examination she has stated that she was married with one Saudagar Choudhary but she has denied that she has got any children from the wed-lock with Saudagar Choudhary. She has produced a voter list marked as Ext-1 in which at serial No. 44 it is mentioned that Awadhesh Choudhary is the son of Chhedi Choudhary and at serial No. 45 it is mentioned that Parvati Devi (Applicant) is the wife of Awadhesh Choudhary. The said voter list is of the year 1992.

6. The Petitioner-husband also examined four witnesses including himself to prove his case, He in his evidence as O.P.W.4 denied that the applicant was ever married with him. He also admitted that his first wife died about 23 years ago. The O.P.W. has stated in Para 10 of his evidence that in the voter list the name of wife and husband are mentioned. Other witnesses of the Petitioner, though denied the marriage between the present Petitioner and the applicant-wife but O.P.W. 2 has stated in his evidence in Para 11 that after the death of first wife, the present Petitioner remarried with another lady. Furthermore, witnesses have stated that the Petitioner has got a house and a shop and he is a teacher in a government school.

7. At the time of argument of this case, the applicant O.P. No. 2 filed a certified copy of the evidence of the witnesses and also the copy of Ext.-1 which clearly

shows that the name of the applicant wife is mentioned at serial No. 45 as wife of Awadhesh Choudhary, the present Petitioner.

8. Learned Counsel for the Petitioner-husband has submitted that though it has not been proved that the applicant-wife is a married wife of the present Petitioner but the trial court has granted good amount of maintenance to her. It has been further submitted that the evidence adduced by the applicant-wife is not at all reliable as there are many major contradictions in her evidence. It is submitted that court below has not considered the case of the Petitioner-husband. It is contended that though the allegation made by the applicant is that she was assaulted by the Petitioner and further she left the house of the Petitioner-husband. But in her cross-examination she has stated that she had not given any information to the police regarding any torture or mar-peat at any point of time.

9. From the impugned order, I find that the court-below has found as follows:

He has also drawn the attention of the court towards the photographs filed by the Petitioner (Y for identification) to which the opp. party in his evidence (In Para 22) has himself admitted his photograph with Parvati Devi along with a child. This shows that Parvati Devi is a legally wedded wife of Awadhesh Choudhary.

10. Therefore, in my opinion the applicant wife has proved that she is the wife of the present Petitioner as her name is mentioned in the voter list as wife of the present Petitioner-Awadhesh Choudhary and furthermore the photograph in which the applicant-wife and the present Petitioner-husband are sitting together with a child, accepted by the present Petitioner. The trial Court has rightly held the present Petitioner as the husband of the applicant. Admittedly, the Petitioner is a teacher in a government school. It is also an admitted fact that the present Petitioner is not maintaining the applicant-wife and her children.

11. Therefore, in my opinion the maintenance granted by the trial court of Rs. 8000/- per month is wholly reasonable and appropriate. I, therefore, do not find any reason to interfere with the impugned order.

12. This revision application, being devoid of any merit, is accordingly dismissed.