
(2012) 01 JH CK 0084

In the Jharkhand High Court

Case No : Criminal Miscellaneous No. 4753 of 2000

Baijal Tuddu

APPELLANT

Vs

State of Bihar now Jharkhand and Another

RESPONDENT

Date of Decision : 23-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2012) 01 JH CK 0084

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad

1. This revision application is directed against the order dated 15.12.1999 passed by the then 1st Additional Sessions Judge, Godda in Cr. Rev. No. 41 of 1994/138 of 1998 whereby learned Additional Sessions Judge having set aside the order dated 13.4.1994 passed by the then Sub-divisional Judicial Magistrate, Godda in Cr. Misc. No. 5 of 1987 whereby and whereunder an application filed u/s 125 of the Code of Criminal Procedure for maintenance by the petitioner was rejected, directed the petitioner to pay a sum of Rs. 500/- per month as maintenance to the opposite party No. 2. Having heard learned counsel appearing for the State and on perusal of the record, it does appear that an application u/s 125 of the Code of Criminal Procedure was filed on 20.5.1987 by the opposite party No. 2 seeking maintenance of Rs,500/- per month. The petitioner submitted its show cause stating therein that the petitioner had divorced his wife-opposite party No. 2 as per customs of Santhal community in a Panchayati with consent of opposite party No. 2. Thereupon opposite party No. 2 married Bhattu Besra and lived with him as his wife. When Bhattu Besra died, this application has been filed claiming to be the wife of this petitioner and taking a plea that she had been driven out of the house forcibly.

2. The parties led their evidences in support of their cases. The petitioner in support of his case examined himself as O.P.W.4 wherein he is stated that while performing the rituals of the divorce known as "Chhora Chhori", he tore off Sakhua leaf and then poured water over it as per custom essentially to be performed for having divorce. The said assertion was corroborated by O.P.W.3, who is a resident of village-Jagatpur where divorce took place. On the said material, learned Sub-divisional Judicial Magistrate did hold that after observation of the essential rituals, divorce was granted by the petitioner to the opposite party No. 2 but this finding was reversed by the Additional Sessions Judge by holding that Jog Manjhi, who performed the formalities has not been examined by the petitioner.

3. It is true that Jog Manjhi has not been examined but there has been nothing in the statement of the petitioner and the witnesses to disbelieve their versions regarding performance of essential rituals necessary for having divorce.

4. Accordingly, the learned Additional Sessions Judge committed illegality in reversing the finding of the learned Sub-divisional Judicial Magistrate.

5. Further it does appear that it is also the case of the petitioner that after being divorced, opposite party No. 2 had married Bhattu Besra. In support of his case, petitioner himself examined whereas he is stated that opposite party No. 2 while was with Bhattu Besra met him and stated that she had married Bhattu Besra. Thus, it does appear that the petitioner was never the person who was an witness to the marriage but one witness, O.P.W.2, who of course is related to the petitioner has categorically deposed that in his presence, marriage took place in between Bhattu Besra and the opposite party No. 2. Since his version did not get corroboration from the evidence of any other witness, learned Additional Sessions Judge did not accept the version which, in my opinion, was not correct for the reason that he seems to be wholly trustworthy as nothing could be elicited which impeaches the testimony of the witness.

6. As I stated earlier that nothing is there in his evidence to impeach his evidence in any manner, learned Additional Sessions Judge should have accepted the version of O.P.W.2.

7. In view of the aforesaid facts and circumstances, learned Additional Sessions Judge seems to have committed illegality in reversing the order passed by the Sub-divisional Judicial Magistrate, Godda. Accordingly, the order dated 15.12.1999 passed by the learned Additional Sessions Judge, Godda is hereby set aside. In the result, this application is allowed.