
(2010) 01 OHC CK 0021
In the Orissa High Court

Bikram Ray

APPELLANT

Vs

Smt. Jema Hembram and Another

RESPONDENT

Date of Decision : 05-01-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Evidence Act, 1872 — Section 35

Citation : (2011) 2 CivCC 821 : (2010) CLT 305 (Suppl CrI) : (2010) 2 Crimes 190 : (2010) 1 OLR 443 : (2011) 2 RCR(Civil) 420 : (2011) 2 RCR(Civil) 420 : (2011) 1 RCR(Criminal) 584 : (2011) 1 RCR(Criminal) 584

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Mishra, J.—In this Revision, petitioner i.e. opposite party in C.M.C. No. 57 of 2001 of the Court of S.D.J.M., Karanjia has assailed the partly reversing judgment of the learned Adhoc Addl. District and Sessions Judge, Fast Track Court, Baripada in Criminal Revision No. 3/37 of 2005/04.

2. Succinctly stated, case of the petitioner No. 1 before the trial Court is that on 05.03.2000 as per caste custom, she married the opposite party i.e. the present petitioner and stayed with him for a period of seven to eight months in his house as his wife and out of their wedlock on 15.06.2001, she gave birth to petitioner No. 2. It is further alleged that after the birth of petitioner No. 2, her father i.e., the present petitioner and his family members started torturing petitioner No. 1 both mentally and physically and did not give her any food, cloth and medicine. Finally on 15.07.2001, he drove her away. Thereafter, she is staying in her parents' house along with her minor daughter. Her husband did not provide any maintenance to her or her minor daughter. Hence, she filed the application for maintenance u/s 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Code" for brevity). Opposite party (present petitioner) i.e., the husband denied all the allegations made by the petitioner and further pleaded that petitioner No. 1 is the wife of one Tribeni Patra and petitioner No. 2

is the daughter of said Tribeni Patra. Therefore, he prayed to dismiss the application.

3. Petitioners examined four witnesses on their behalf while the opposite party examined three. Learned trial Court has held that petitioner No. 1 is not the legally married wife of the opposite party. He came to such conclusion in view of the fact that on another occasion, petitioner has filed an application for maintenance against the said Tribeni Patra. She had also filed a complaint case against said Tribeni Patra. Disbelieving the birth certificate filed on behalf of the petitioner, learned trial Court has further held that the petitioners have not proved that the petitioner No. 2 is the daughter of the opposite party. Accordingly, the trial Court dismissed the application for maintenance.

This order was challenged in Criminal Revision No. 337 of 2004. Learned Addl. Sessions Judge, though confirmed the findings recorded by the learned trial Court that the petitioner No. 1 is not the legally married wife of opposite party No. 1, overruled the order of the learned trial Court that petitioner No. 2 is not the daughter of the opposite party. Accordingly, the revisional Court allowed the revision in part and directed that the opposite party should pay a monthly maintenance of Rs. 500/- to petitioner No. 2 from the date of the petition i.e. 30.07.2001. Such reversing judgment of the learned Addl. Sessions Judge has been assailed in this revision.

4. The question that arises in this revision is the probative value of the birth certificate issued in favour of petitioner No. 2.

5. Learned trial Court disbelieved Ext.2 i.e. the Birth Certificate of petitioner No. 2, wherein the opposite party has been described as the father on the ground that such information was given to the authorities by petitioner No. 1 i.e. the mother of the child. Learned Counsel for the opposite party has supported the findings recorded by the learned trial Court. By relying on the reported decisions B. Mahadeva Rao Vs. Yesoda Bai, ; Smt. Lata Dei alias Pramila and Others Vs. Bishnu Charan Panda, and Smt. Pravasini Jena Vs. Smt. Mayarani Biswas, , learned Counsel for the petitioner argued that heavy onus lies on the petitioners to prove that petitioner No. 2 is the daughter of the opposite party. In B. Mahadev Raos" case, Hon"ble High Court of Madras observed that heavy burden is cast on the mother to prove paternity of the child in such cases. However, proceedings u/s 125, Cr.P.C. are summary in nature. A strict proof of paternity beyond all reasonable doubt is not necessary in such a proceeding. Section 125, Cr.P.C. is a benevolent provision to serve social purpose in eradicating bastardisation and vagrancy. Obligation of the parties u/s 125 of the Code is a part and independent of their obligation under their respective personal law. The right of the child either legitimate or illegitimate under the Code is an individual right of the child in his/her own right, independent of the mother. In Smt. Lata Dei alias Primala's case (supra), the Division Bench relying upon the reported decision of B. Mahadev Rao (supra) has held that in such a case the woman is a highly interested person. The Court has a duty to see that her statement gets

some independent corroboration direct or circumstantial, that the claimant could have conceived the child when she and alleged father had access to each other. In other words, the Division Bench has cautioned against a possible burdening of a person, who is not the father of the child.

6. In this case, in addition to the evidence of the mother herself i.e. petitioner No. 1, other witnesses have also stated about their residence together and the petitioners have relied upon the Birth Certificate issued by the Public Health and Welfare Department. In *Mayadhar Nayak Vs. Sub-Divisional Officer, Jajpur and Others*, , this Court has held that the entries in Birth and Death Registers are public documents and are admissible u/s 35 of the Evidence Act. The Court further held that it is not necessary to prove who made the entries and what was the source of his information. The Court further held that the register being a public document, presumption of correctness attaches to it and heavy onus lies on the party who want to dispute the presumption. In *Siba Prasad Jena v. Puspanjali Jena and Anr.* 2007 (Supp 1) OLR 966, this Court further held that the birth certificate is the extract of the register of births and deaths maintained by the Health Centre. The register is maintained in Form No. 11 in accordance with Rule 13 of the Orissa Registration of Births and Deaths Rules, 1970. Therefore, birth certificate is admissible as a public document. The Court further held that when birth certificate has been issued by the Registrar of Births and Deaths, it should be treated as a public document issued on the basis of the register maintained under the Registration of Births and Deaths Act, 1969. Therefore, no formal proof is necessary. So keeping in view the settled principle of law that the Birth certificate issued by competent authority is a public document, which is admissible in evidence, the burden heavily rests on the opposite party to disprove the content thereof. In this case, there is no material worth the name to disprove Ext.2. So, the learned Addl. Sessions Judge has correctly reversed the trial Court judgment in part.

7. In the result, finding no infirmity in the impugned judgment, the Criminal Revision fails and the same is dismissed.