
(1961) 09 GAU CK 0001
In the Gauhati High Court

Jamadar Parmeshwardin Singh

APPELLANT

Vs

Smt. Bidya Devi

RESPONDENT

Date of Decision : 19-09-1961

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 488
Scheduled Districts Act, 1874 — Section 6

Citation : (1962) CriLJ 132

Hon'ble Judges : G. Mehrotra, C.J;S.K. Dutta, J

Bench : Division Bench

Judgement

G. Mehrotra, C.J.—The present petition arises out of the following circumstances. Srimati Bidya Debi the opposite party in the present petition, filed an application in the court of the Assistant to the Deputy Commissioner, Garo Hills, Tura against the petitioner u/s 488, Criminal Procedure Code, claiming Rs. 50/- as maintenance for herself and Rs. 50/- for the maintenance of the two daughters alleged to have been born out of the wedlock with the petitioner.

The case of the opposite party was that she was married to the petitioner according to Hindu rites on the 28th October 1951 and the parties lived as husband and wife at Tura and Shillong and two daughters were born out of the wedlock. The opposite party used to get money from the petitioner whenever he was out on service. But since 1957 he did not send any money and was neglecting her.

The marriage was denied by the petitioner. It was stated by the petitioner that she was the wife of one Karon Singh who was at Cooch Behar and that there was a son of twelve years of age named Rajendra who was born after the marriage with Kamal Singh. The petitioner Went to Tura on military duty in 1951 and he was introduced to the opposite party and grew intimate with her mother. As the opposite party at that time was already carrying, to save her prestige, the petitioner wrote two chits admitting to be the husband of the opposite party.

The Assistant to the Deputy Commissioner by his order dated the 4th February

1960 on a consideration of the evidence before him held that there was the marriage ceremony performed according to Hindu rites. As to the point raised by the present petitioner that the subsequent marriage with the opposite party is null and void as she had already been married before he held that he was not to enter into complicated question, of civil law in this proceeding. He further held that the second child was born through the present petitioner and thus he ordered that Rs. 25/-per month should be paid to the opposite party for her maintenance and Rs. 20/- for the maintenance of the child by the petitioner.

2. The first point urged by Mr. Sen appearing for the petitioner is that the provisions of the Criminal Procedure Code are not applicable to the Garo Hills Autonomous District and thus no such power could be exercised in this area. He has secondly contended that the opposite party having been married to Kamal Singh, her marriage with the present petitioner was invalid in law and thus she could not claim any maintenance. The Magistrate was not right in holding that he should not go into the question of the validity of the marriage. Lastly it is urged that the court below in allowing the maintenance has not taken into consideration the income of the petitioner.

3. Under paragraph 20, Table, Part A, item 2 of the Sixth Schedule to the Constitution the Garo Hills District is within the tribal areas and the administration of the area is to be carried on in accordance with the provisions of the Sixth Schedule. The Governor of Assam made certain rules for the administration of justice and police in the Garo Hills District in the exercise of his powers u/s 6 of the Scheduled Districts Act, 1874. These rules were published on the 29th March 1937.

After the coming into force of the Constitution on the 3rd April 1952 certain regulations were passed by the Governor of Assam in the exercise of his powers, under Clause (b) of Sub-paragraph of paragraph 19 of the Sixth Schedule to the Constitution of India which were assented to by the President of India. Under this regulation the administration of justice and police rules made by the Governor of Assam for the Garo Hills District published in the year 1937 were applied to the Garo Hills District with certain modifications. Under paragraph 19 of the Sixth Schedule of the Constitution till the District Council was constituted, the administration of the tribal area was to be run by the Governor and he was given powers to make regulations for the administration of the said area which may have the effect of modifying the existing laws. The application of the Administration of Justice and Police rules published in the year 1937 was thus continued in this area by the aforesaid regulation made by the Governor of Assam in the year 1952. There was thus a local law for the administration of criminal justice prevailing in this area and the provisions of the Criminal Procedure Code would thus not apply to this area.

In the year 1953 the District Councils were constituted. The administration of the area after the constitution of the District Council vested in the said District Council by paragraph 2 of the Sixth Schedule. After the constitution of the

District Council the administration of this area was carried on in accordance with paragraphs 1 to 17 of the Sixth Schedule to the Constitution. The administration of criminal justice had to be regulated in this area thus in accordance with the provisions of paragraphs 1 to 17 of the Sixth Schedule.

The District Council of the Garo Hills with the previous approval of the Governor of Assam under paragraph 4(4) of the Sixth Schedule made certain rules which were published in the Assam Gazette dated the 1st April 1953. Under these rules village courts, Subordinate District Council Court and District Council Court were constituted.

The rules further lay down the powers of these courts and the cases which could be tried by these courts. Under rule 14 the village courts are empowered to try suits in cases of the nature described therein wherein both the parties belong to the scheduled tribe or tribes resident within its jurisdiction. Under Rule 21 a Subordinate District Council Court shall have original jurisdiction in all suits and cases in which both the parties do not fall within the local jurisdiction of the same Village Court, but within the areas under the jurisdiction of the Subordinate District Council Court and also in cases and suits referred to it by a Village Court. Under Rule 22 a Subordinate District Council Court shall be competent to try all suits within the jurisdiction of the Subordinate District Council Court, other than the suits and cases referred to in Rule 23. The cases arising out of applications u/s 488, Criminal Procedure Code are not mentioned in Rule 23. Rule 24 provides that suits and cases referred to in Rule 23 shall continue to be tried and dealt with by the existing Courts until such time as the Governor deems fit to invest the Subordinate District Council Court with such powers by notification in the Gazette.

As cases relating to maintenance on an application similar to one contemplated by Section 488, Criminal Procedure Code are not mentioned in Rule 23. Rule 24 by its own force does not confer any power on the court of the Deputy Commissioner and his Assistants to deal with such application.

4. I have already pointed out that the Criminal Procedure Code does not apply to this area. That being so, the Assistant to the Deputy Commissioner, Garo Hills, Tura had no jurisdiction to entertain and dispose of application purporting to be one u/s 488, Criminal Procedure Code. Section 488, Criminal Procedure Code gives a summary jurisdiction to the Magistrates to grant maintenance to wives and children. The Chapter XXXVI of the Criminal Procedure Code elaborately lays down the procedure for disposal of such applications and for the enforcement of an order of maintenance. The power u/s 488, Criminal Procedure Code can be exercised by the District Magistrate, a Presidency Magistrate, a Sub-Divisional Magistrate or a Magistrate of the first class. The Assistant to the Deputy Commissioner does not come within the meaning of any of such Magistrates as defined under the Criminal Procedure Code. The magisterial powers may have been conferred on the Assistant to the Deputy Commissioner for trial of cases under the provisions of the Administration of Justice rules. But unless there is

anything in the rules framed by the District Council, Garo Hills, giving power to the Assistant to the Deputy Commissioner to deal with applications purporting to be u/s 488, Criminal Procedure Code, the Assistant to the Deputy Commissioner had no power to entertain any such applications.

Even if the opposite party to this petition has no remedy before a criminal court u/s 488, Criminal Procedure Code, it does not take away her right to claim maintenance in a proper court under the law applicable to the parties, in these proceedings. In a proper suit filed before a civil court the question of the validity of the marriage and the right of the opposite party to claim maintenance for herself and her children will be determined. But in my opinion the Assistant to the Deputy Commissioner had no jurisdiction to deal with an application for maintenance purporting to be one u/s 488, Criminal Procedure Code. In view of the decision on this point, it is not necessary to deal with the other points raised by the petitioner. The application is allowed and the order of the Assistant to the Deputy Commissioner is set aside.

S.K. Dutta, J.

5. I agree.