
(2004) 09 JH CK 0055
In the Jharkhand High Court
Case No : Criminal M.P. No. 729 of 2002

Krishna Chandra Jerai

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 09-09-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Citation : (2005) 1 DMC 437 : (2004) 4 JCR 282

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Ananda Sen, for the Appellant; R.P. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—Heard Mr. Ananda Sen, learned counsel appearing for the petitioner and Mr. R.P. Gupta, learned counsel appearing for opposite party No. 2.

2. From the judgment passed by the learned Judicial Magistrate, contained in Annexure-2, it appears that the proceeding u/s 125. Cr PC initiated at the instance of the opposite party No. 2 herein, whereby she had prayed for grant of maintenance, was rejected on the ground that she failed to prove that she was legally wedded wife of the petitioner herein Krishna Chandra Jerai. It appears that the learned Magistrate after considering the evidence on record held that it was not proved beyond all reasonable doubt that the applicant was the legal wife of the petitioner herein.

3. It further appears that in the proceeding before the Magistrate it was admitted by the petitioner herein that both the parties, i.e. the applicant (O.P. No. 2 herein) and the petitioner Krishna Chandra Jerai lived together as husband and wife for pretty long time and it is also admitted that out of their relationship three children were born.

4. Though it was held by the learned Magistrate that there was no dispute with regard to the fact that both the parties lived together as husband and wife and

three children were born out of their relationship but he rejected the prayer for grant of maintenance u/s 125, Cr PC on the ground that she failed to prove that she was legally wedded wife of Krishna Chandra Jerai.

5. Thereafter, the present opposite party No. 2 preferred a revision before the Sessions Judge, Chaibasa, which was heard by the 3rd Additional Sessions Judge and he by the impugned judgment allowed the revision application, set aside the order of the learned Magistrate and directed the petitioner herein to pay the maintenance allowance of @ Rs. 500/- P.M. to the present opposite party No. 2 herein.

6. Mr. Ananda Sen, learned counsel appearing for the petitioner submitted that the Revisional Court has committed error in allowing maintenance in favour of the opposite party No. 2 because the opposite party No. 2 was not legally wedded wife of the present petitioner and, therefore, no maintenance u/s 125, Cr PC could have been awarded.

7. The Supreme Court in the case of Dwarika Prasad Satpathy Vs. Bidyut Praya Dixit and Another, , has held that the standard of proof of marriage in a proceeding u/s 125, Cr PC is not as strict as is required in a trial of offence u/s 494 of the IPC and if the claimant in proceedings u/s 125 of the Code succeeds in showing that she and the respondent have lived together as husband and wife, the Court can presume that they are legally wedded spouses.

8. It was further held in the aforesaid decision that the provision" u/s 125 is not be utilized for defeating the rights conferred by the Legislature to the destitute women, children or parents who are victims of social environment. Moreover order passed u/s 125 does not finally determine the rights and liabilities of parties and parties can file civil suit to have their status determined.

9. Relying on the aforesaid decision of the Supreme Court I hold that since the parties in the present case did not dispute the fact that they lived together as husband and wife and three children were born out of their relationship and, therefore, the strict proof of marriage in a summary proceeding like the present in nature was not required to be proved by the opposite party No. 2 and, therefore, the learned revisional Court rightly allowed the revision application and set aside the order passed by the learned Magistrate.

10. In view of the aforesaid discussion and findings, I refuse to interfere with the order passed by the revisional Court. Accordingly, having found no merit, this application is dismissed.