
(2019) 03 OHC CK 0001
In the Orissa High Court
Case No : CRLMC No.3135 Of 2008

Parbati Chintada

APPELLANT

Vs

Gopal Krishna Chintada

RESPONDENT

Date of Decision : 26-03-2019

Acts Referred:

Registration Of Births And Deaths Act, 1969 — Section 12, 17(2)
Code Of Criminal Procedure, 1973 — Section 125, 482
Evidence Act, 1872 — Section 112

Citation : (2019) 2 ILR(CUT) 444

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

Bench : Single Bench

Advocate : V. Narasingh, B.P. Pradhan, B.R. Sahu

Final Decision : Allowed

Judgement

Dr. A. K. Mishra, J

1. In this proceeding U/s. 482 Cr.P.C., the order dated 25.07.2008 in Criminal Revision No.14 of 2006 by the learned Addl. Sessions Judge, Gajapati is

assailed, whereby the revisional court has set aside the maintenance order in favour of the present petitioner-minor daughter, passed by the learned

SDJM, Parlakhemundi in M.C. 5/2003.

2. Adumbrated in brief, the fact runs thus:

The present petitioner is the daughter of Martha Pani who is the mother-guardian in all forums for her maintenance. The

maintenance was claimed against the father who is the opposite party here.

It is the specific case that the mother of the petitioner on the promise of marriage was induced by the opposite party and became pregnant. On

10.03.1998, the minor daughter took birth. The putative father did not marry her

and left the village. The birth of the petitioner was registered and the date of registration was 21.03.1998 as per Certificate of Birth (Ext.1). On 10.04.2003, a petition was filed U/s. 125 of Cr.P.C. claiming maintenance for the child as the father had sufficient income.

2-a. The opposite party-husband filed counter disputing the paternity of the petitioner-minor girl. He denied any such access or marriage with the mother of minor daughter. The evidence was taken up. The mother of the petitioner, her sister and another independent witness were examined while the opposite party-husband, School Headmaster and co-villagers were examined on behalf of opposite party. Birth Certificate and School admission register were exhibited.

2-b. Learned SDJM, Parlakhemundi analyzed the evidence and held that the petitioner-minor daughter was entitled to get maintenance from father-opposite party and accordingly allowed monthly maintenance of Rs.350/- from the date of filing of the petition.

3. The putative-father filed criminal revision. Learned Addl. Sessions Judge, Gajapati re-appreciated the evidence both oral and documentary. He found that the father's name of the child was not mentioned in the School Register and relied upon a decision reported in AIR 1962 Madras 141 in the case of B. Mahadeva Rao vrs. Yesoda Bai to the effect that Birth Certificate was not the proof of paternity. The revisional court set aside the order granting maintenance of the learned SDJM, Parlakhemundi. The said order of revisional court is now impugned in this case.

4. None appears on behalf of opposite party.

5. Learned counsel for the petitioner submits that learned revisional court had exceeded its jurisdiction in re-appreciating the evidence in a proceeding U/s.125 of Cr.P.C. and thereby has allowed the child to starve. Further B. Mahadeva Rao (supra) decision was prior to the commencement of the Registration of Births and Deaths Act, 1969 under which provision, the present Birth Certificate of the petitioner (Ext.1) was issued, as such the ratio of that decision is not applicable.

6. In the case at hand, the mother has given evidence that opposite party was the father of the minor daughter. Other two witnesses on her behalf had admitted the same. The Birth Certificate (Ext.1) has been issued by the

Registrar of Births and Deaths U/s.12 of the Registration of Births and Deaths Act, 1969, wherein the present opposite party-Gopal Krishna Chintada

has been shown as father. The entry of birth was made on 21.03.1998. Thus, it was much prior to the litigation.

6-a. Section 17(2) of the Registration of Births and Deaths Act, 1969 provides that the extract given by the State Government i.e. Certificate shall be

admissible evidence for the purpose of proving the birth or death to which the entry relates. In this regard the decision of this Court inÂ theÂ caseÂ

ofÂ Bikram Ray vrs. Smt. Jema Hembram and another reported in 2010 (I) OLR 443, it has been held at para-6:-

â??6. 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.â??

6-b. In a summary procedure case U/s.125 Cr.P.C., a public document like birth certificate issued under the Registration of Births and Deaths Act,

1969 is admissible and if entry therein is found to have made in an undisputed period, the same can be considered to corroborate the oral testimony of

mother in a case of paternity dispute.

6-c. The Magistrate was expected to pass order after being prima facie satisfied about the marital status of the parties. It is obvious that the said

decision is tentative decision and this is what reiterated in the decision reported in 1999(1) OLR (SC) 387 in the case of Santosh (Smt.) vrs. Naresh

Pal.

6-d. It may be stated that B. Mahadevâ??s decision has been referred to in the aforesaid Bikram Ray (supra) case. In view of the above legal

position, it cannot be said that the order granting maintenance U/s.125 of Cr.P.C. by the learned SDJM, Parlakhemundi was contrary to the law or an

outcome of irregular procedure.

7. The revisional court has exceeded its jurisdiction when he entered to re-assess the evidence on record and that too relied upon a decision which

was prior to the commencement of the Registration of Births and Deaths Act, 1969. The proceeding U/s.125 Cr.P.C. is summary in nature and its

decision is subject to final order in any civil proceeding. The scope of revision against the order granting maintenance U/s. 125 of Cr.P.C. is limited.

In this regard, the decision reported in (2011) 12 SCC 189 in the case of Pyla Mutyalamma @ Satyavathi vrs. Pyla Suri Demudu & Another, wherein

it is held at para-10:-

“10. xxx xxx xxx

Thus, the ratio decidendi which emerges out of a catena of authorities on the efficacy and value of the order passed by the Magistrate while determining

maintenance under Section 125 Cr.P.C. is that it should not be disturbed while exercising revisional jurisdiction.”

8. The petitioner was given birth on 10.03.1998. Maintenance case U/s. 125 Cr.P.C. was filed against opposite party on 10.03.2003. She was five

years old then. She cannot be allowed to starve because her parental status is disputed by the putative father. In this regard but in different context,

the Hon’ble Supreme Court in the case of Union of India and others vrs. Ex. FLT. LT.G.S. Bajwa reported in (2005) 30 OCR (SC) 386, has

observed that “we cannot permit the children to starve simply because the respondent persists with his contentions regarding the paternity of those

children”.

9. Child should not be the victim of dispute between the parents. The father is he, to whom the mother indicates. In a decision rendered by the

Hon’ble Supreme Court in the case of Nandlal Wasudeo Badwaik vrs. Lata Nandlal Badwaik and another reported in AIR 2014 SC 932, wherein

their Lordships have stated about the relevance of scientific advancement with regard to paternity dispute in the following words:-“

“Para-17. We may remember that Section 112 of the Evidence Act was enacted at a time when the modern scientific advancement and DNA test were not even

in contemplation of the Legislature. The result of DNA test is said to be scientifically accurate, although Section 112 raises a presumption of conclusive

proof on

satisfaction of the conditions enumerated therein but the same is rebuttable. The presumption may afford legitimate means of arriving at an affirmative legal

conclusion. While the truth or fact is known, in our opinion, there is no need or room for any presumption. Where there is evidence to the contrary, the

presumption is rebuttable and must yield to proof. Interest of justice is best served by ascertaining the truth and the court should be furnished with the best

available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. In our opinion, when there is a conflict

between a conclusive proof envisaged under law and a proof based on scientific advancement accepted by the world community to be correct, the latter must

prevail over the former.â??

10. Learned SDJM has not exceeded its jurisdiction to pass order granting maintenance to the petitioner. The revisional court instead of finding any

legal infirmity, has exceeded its jurisdiction to set aside the order granting maintenance U/s.125 Cr.P.C. Such order is not sustainable in the eye of law.

11. Consequently, the impugned order dated 25.07.2008 passed by the learned Addl. Sessions Judge, Gajapati in Criminal Revision No.14 of 2006 is

hereby set aside. The order dated 06.02.2006 passed by the learned SDJM, Parlakhemundi in M.C.No.5 of 2003 is restored.

Accordingly, the CRLMC is allowed.

LCR be returned immediately to the lower court.