
(1972) 09 OHC CK 0026

In the Orissa High Court

Case No : Criminal Revision No. 550 of 1971

Pitabas Panigrahi alias Choudhury

APPELLANT

Vs

Beta Sabha Singh

RESPONDENT

Date of Decision : 29-09-1972

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 488

Citation : (1972) 38 CLT 1293

Hon'ble Judges : K.B. Panda, J

Bench : Single Bench

Advocate : S.P. Raju, for Y.S.N. Murty, for the Appellant; S.C. Adhikari, for the Respondent

Judgement

K.B. Panda, J.—The revision is directed against an order granting maintenance of Rs. 45/- per month to the deserted wife and three children staying with her and born to her through Petitioner Pitabas Panigrahi alias Chowdhury. In short, the facts are like this: The Petitioner is a Brahmin and the Respondent is a Christian. Somehow the Petitioner took a fancy on the Respondent and wanted to marry her. The marriage was solemnised in a Church and the same was recorded in the register maintained for such purpose. The Petitioner begot three children to the Respondent and they are two daughters aged 12 and 9 years and the third one is a son aged 7 years by the time of her deposition sometime in August, 1970. At first the couple were residing at Bhanjanagar where the Petitioner accepted a job of driver. Thereafter the Petitioner shifted to Berhampur and neglected to maintain the Respondent and the three children. She waited for about six years and then filed the present proceeding u/s 488, Code of Criminal Procedure.

2. The stand of the Petitioner is a total denial of the marriage with the Respondent. The learned Magistrate framed as many as 5 issues of which the material issues are:

(i) Whether the Respondent is the wife of the Petitioner;

- (ii) Whether the children are born to the Respondent through the Petitioner;
- (iii) Whether the Petitioner has refused or neglected to maintain the Respondent and her children; and
- (iv) Whether the Respondent and, her children are unable to maintain themselves.

On these points the evidence is against the Petitioner. On the Respondent's side there were 5 witnesses and the Petitioner only examined himself.

3. It was urged on behalf of the Petitioner that the provisions of Section 488, Code of Criminal Procedure are not attracted to the present case inasmuch as the wife has not proved desertion or refusal by the husband to maintain her and her children. In view of the stand of the Petitioner that there was no marriage at all, these questions do not arise at all for consideration. Even then the finding of the learned Magistrate is against the Petitioner. I see no reason sitting in the revisional jurisdiction to interfere with the finding of fact which appears to be very correct. No other point of law is urged to justify interference. As such the petition is rejected with costs and hearing fee of Rs. 100/-.