
(1999) 11 OHC CK 0037

In the Orissa High Court

Case No : Criminal Revisions No's. 255 and 398 of 1997

Rama Chandra Samal

APPELLANT

Vs

Gita Samal
 Gita Samal Vs Rama Chandra Samal

RESPONDENT

Date of Decision : 26-11-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Family Courts Act, 1984 — Section 14

Citation : (2000) 89 CLT 185

Hon'ble Judges : P.K. Mohanty, J

Bench : Single Bench

Advocate : B.K. Nanda, P. Nanda, S.K. Nanda, P.B. Pal, N. Das and S.P. Acharya, in Cri. Rev. No. 255/97, S.K. Swain, D.R. Rath, A.C. Deo-2 and A.C. Behera, in Cri. Rev. No. 398/97, for the Appellant; R. Behera and S.K. Swain, in Cri. Rev. No. 255/97 and None in Cri. Rev. No. 398/97, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanty, J.—Both the Criminal Revisions arise out of the order dated 6-2-1997 of the Judge. Family Court, Cuttack in a petition u/s 125, Cr. P.C., awarding maintenance. Since the case arise out of a common judgment, with the consent and on agreement of the learned Counsel for the parties, both the Revisions are taken up together and disposed of by this common judgment.

2. Criminal Revision No. 255 of 1997 is by the husband challenging the order of maintenance and Criminal Revision No. 398 of 1997 is by the wife claiming enhancement of the maintenance.

3. It is the plea of the Petitioner-husband that there being no valid and legal evidence on record to prove the marriage between the parties, the finding of the learned Judge, Family Court basing on the oral evidence and the purported affidavit was illegal and as such, the Petitioner-husband is not liable to pay" any maintenance in absence of proof of marriage. It is contended by the learned Counsel that the onus is upon the claimant-wife to establish a legal and valid

marriage in order to be entitled to maintenance u/s 125. Cr. P. Co The appreciation of evidence on the question of marriage made by to Judge, Family Court is vitiated because of the improbabilities and incongruity. It is further submitted that a copy of the affidavit in absence of the original, is not admissible and as such, the learned Judge, Family Court could not have come to a finding that there was a valid marriage between the parties. However, the quantum of maintenance has not been seriously challenged.

4. The Petitioner-wife's case in the court below was that both the parties are Harijans and are Panas by Caste and their marriage was solemnized in the temple of Kalagni Mahadev sometimes in the year 1991 after" due observance of all due customary ceremonies. They consummated the marriage in the house of the Petitioner-wife since the family members of the opp. party-husband were observing obsequies due to death of one of their close relation. It was further claimed that both the parties have sworn an affidavit before the Executive Magistrate, Salipur admitting the factum of marriage. But however, after consummating the marriage and enjoying the conjugal life for a period of two months in the house of the Petitioner, the opp. party-husband demanded dowry like gold ring, cycle and a cash of Rs. 2,000/ and since the family members of the wife could not comply with the said demand, the husband started torturing the wife and finally he deserted her and went to his father's house. Since then the husband has not provided any subsistence to the Petitioner and since she has no independent source of income whereas the opp. patty-husband is working as a mason and gets around Rs. 4,000/- per month, she should be provided with maintenance by the husband.

5. The opp. party-husband in the court below in his counter disputed the marital status and according to him at no point of time he married the Petitioner, but a false case has been started against him inasmuch as he does not work as a mason at all. But however, he is working as a laborer and gets Rs. 25/ per day subject to availability of work.

6. To substantiate the case, the Petitioner-wife had examined two witnesses including her and the opp. party-husband also has examined two witnesses. The Petitioner-wife relied upon the voter list wherein she has been described as the wife of the opp. party. A copy of the affidavit purported to have been sworn to by the parties before the Executive Magistrate on 3-5-1991 admitting the acetum of marriage was also filed. The learned Judge. Family Court on,consideration of the materials on record hold that the marriage has been established from the statement of the Petitioner-wife and her mother read along with the affidavit sworn to by the parties and the voter list of the year 1995 of village Balishimala.

7. The marriage being in dispute, let me now consider as to whether the Petitioner-wife could prove the marriage to be entitled to the maintenance u/s 125, Cr. P.C. Law is well settled that for the purpose of Section 125, Cr. P.C. the standard of proof of marriage is not as high as required under the Hindu Marriage Act. When the marriage is established, maintenance should be allowed.

If the legality or validity of the marriage is questioned, it should be raised before a Civil Court. It is not open to the Criminal Court to ask the "wife to first prove the extent of the marriage in a Civil Court and seek relief under the Code of Criminal Procedure thereafter. A proceeding u/s 125, Cr. P.C. are of summary nature and the matter has to be considered in the backyard to the enactment of the provision to make available to the weaker section of the society a speedy remedy for their maintenance who have been neglected or refused to be maintained by the person concerned. Law is well settled that so far as the marriage is concerned in a proceeding u/s 125, Cr. P.C. the findings of the Criminal courts are not final and the parties can agitate their rights in an appropriate forum. The learned Judge. Family Court has" taken into consideration the evidence of the Petitioner-wife and her mother who have clearly deposed that the marriage was solemnized in the Kalagni. Mahadev temple of the village where their Caste men were present and the religious ceremonies were performed there. It is further in the evidence that in the voter list of the year 1995 at serial No. 914 the name of Gita" Samal (the wife) has been mentioned describing her as the wife of Rama Chandra Samal. The voter list is a public document and has to carry some weight. In addition, a copy of the affidavit sworn to by both Gita Samal and Rama Chandra Samal before the Executive Magistrate, Salipur admitting the factum of their marriage has been filed. This copy of the affidavit and the voter list are challenged on the ground of its admissibility. Law is well settled that in a proceeding contemplated u/s 125, Cr. P.C. the procedure is summary in nature and strict proof of the marriage as in civil case is not warranted. The evidence of the Petitioner-wife and her mother coupled "with the factors like the name appearing in the voter list as the wife of the opp. party and the copy of the affidavit may render assurance for the conclusion that there was a valid marriage and both the parties remained as husband and wife. The power u/s 14 of the Family Court"s Act is wide enough to look into the documents for the purpose of deciding the dispute which strictly may not be admissible in terms of the Evidence Act. The procedure contemplated under the Family Courts Act is summary in nature. " The voter list may be a public document, but the presumption is not available to be drawn with regard to the entries- made therein. The separation or desertion is because of non-fulfillment of the dowry as alleged. It has been brought out in the cross-examination that the Xerox copy of the affidavit has been filed since the original affidavit has been snatched away from her by the opp. party. The marriage in question thus has been rightly accepted by the learned Judge, Family Court and I do not find any reason to interfere with the said finding.

8. Now coming to the Revision filed by the Petitioner wife namely Criminal Revision No. 398 of 1997, it appears that the learned Judge, Family Court has awarded maintenance of Rs. 3001- per month payable from the month of January, 1997 along with litigation cost of Rs. 1,000/-. The learned Judge, Family Court has not placed much reliance on the copy of" the record-of-right to show that the husband had some landed property recorded in the name of his father.

The names of the heirs" of the father of the husband have not been given to come to a finding as to what would be the extent of his share in the said property. The question as to whether the opp. party-husband was working as a mason or a laborer is seriously disputed and in that view the learned Judge, Family Court has accepted the plea of" the Petitioner that he was working as a laborer. In absence of any cogent materials that in fact the husband was working as a mason, the finding cannot be assailed. In that view of the matter, the award of maintenance of Rs. 300/- per month from January, 1997 and litigation cost of Rs. 1,000/- cannot be said to be illegal 01" arbitrary calling for interference by this Court.

In the result, both the Criminal Revision are dismissed, Let the lower court records to be transmitted forthwith.

Criminal revisions dismissed.