
(2007) 05 OHC CK 0017
In the Orissa High Court
Case No : Criminal Rev. No. 510 of 2005

Siba Prasad Jena	Vs	APPELLANT
Puspanjali Jena and Another		RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Evidence Act, 1872 — Section 74, 76
Orissa Registration of Births and Deaths Rules, 1970 — Rule 13
Registration of Births and Deaths Act, 1969 — Section 17, 17(2)

Citation : (2007) 104 CLT 410

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Advocate : R.K. Nayak, P.C. Jena, S.K. Das and S.R. Mohanty, for the Appellant;
B.N. Rath, J.N. Rath, S.K. Jethy, P.S. Samantra, S.B. Mohanty, P.R. Sahoo, P.K.
Behera and S.K. Mishra for O.P. No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Pradip Mohanty, J.—This revision is directed against the order dated 27.04.2005 passed in Criminal Misc. Case No. 21 of 2004 by the S.D.J.M., Khurda.

2. Brief facts of the case are that the present opposite party No. 1 filed an application u/s 125 Code of Criminal Procedure claiming maintenance as against the Petitioner before the S.D.J.M., Khurda in CrI. Misc. Case No. 21 of 2004. The present Petitioner, who was the opposite party in the said proceeding, appeared and filed his show cause. In the show cause he denied his marriage with opposite party No. 1 and paternity of the child, i.e., opposite party No. 2 in the instant revision. After recording the evidence of both the parties, a petition was filed on behalf of opposite party No. 1 on 26.02.2004 to accept the birth certificate of the child as a public document and to mark as exhibit. Objection was filed on behalf of the present Petitioner wherein the Petitioner took a specific plea that since the document was not produced during the examination of the Petitioner, the same cannot be marked as exhibit unless a chance is given to the Petitioner to have his

say against the same. After hearing the parties, learned S.D.J.M. by order dated 27.04.2005 allowed the prayer of opposite party No. 1, accepted the document as a public document and marked it as Ext.1.

3. Mr. Nayak, learned Counsel for the Petitioner submitted that the birth certificate has been obtained by practising fraud. The birth certificate is a secondary document unless the birth register is proved. The birth certificate cannot be considered as a public document without any formal proof. He further submitted that the entry in the birth register has been tampered with. The Court below should have called for the birth register and considered the genuineness of the certificate, but without doing so it erroneously accepted the same as a public document. In support of his submissions, he relied on a decision of the Apex Court in the case of Smt. Vanajakshamma v. P. Gopala Krishna AIR 1970 Kar 305.

4. Mr. Rath, learned Counsel appearing for the opposite parties contended that the birth certificate is a public document issued u/s 17 of the Registration of Births and Deaths Act, 1969. The document has its statutory value. The birth certificate being prepared by the Registrar of Births and Deaths, who is a public servant in due discharge of the duties under the Registration of Births and Deaths Act, 1969, is a public document as prescribed u/s 74 of the Evidence Act. He further submitted that the burden lies on the Petitioner himself to prove the allegation by leading cogent evidence. Therefore, the learned S.D.J.M. has committed no illegality or error of law calling for interference by this Court. Learned Counsel for the opposite parties in support of his contention relied upon the cases of this Court in Smt. Pravasini Jena Vs. Smt. Mayarani Biswas, , and Ahalya Mangaraj v. State of Orissa 2006 (2) OLR 411.

5. The short question that arises for consideration is whether the birth certificate is a public document and, if so, whether formal proof of the same is necessary. Section 74 of the Indian Evidence Act says which documents are public documents. For better appreciation, Section 74 of the Indian Evidence Act is quoted below:

74. Public documents - The following documents are public documents:

(1) Documents forming the acts, or records of the acts-

(i) of the sovereign authority.

(ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive, of any part of India or of the Common wealth, or of a foreign country.

2) Public records kept in any State of private documents.

The birth certificate is the extract of the register of births and deaths maintained by the Health Centre. The entry is relating to the live birth. The register is maintained in Form No. 11 in accordance with Rule 13 of the Orissa Registration of Births and Deaths Rules, 1970. Section 17 of the Registration of Births and

Deaths Act, 1969 reads as under:

17. Search of births and deaths register;

(1) Subject to any rules made in this behalf by the State Government, including rules relating to the payment of fees and postal charges, any person may:

(a) cause a search to be made by the Register for any entry in a register of births and deaths; and

(b) obtain an extract from such register relating to any birth or death;

Provided that no extract relating to any death, issued to any person, shall disclose the particulars regarding the cause of death as entered in the Register.

(2) All extracts given under this Section shall be certified by the Registrar or any other officer authorized by the State Government to give such extracts as provided in Section 76 of the Indian Evidence Act, 1872, and shall be admissible in evidence for the purpose of providing the birth or death to which the entry relates.

When in accordance with the above quoted Sub-section (2) of Section 17, such certificate has been made admissible in evidence in u/s 76 of the Indian Evidence Act, the authorities granting such certificate should be careful and provide the correct and exact entry instead of being casual, negligent or mischievous, as the case may be. Therefore, the birth certificate is admissible as a public document. The above reason has been fortified in the case of Smt. Pravasini Jena and Ahalya Mangaraj (*supra*). 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. The decision cited by the Petitioner is of no use since the facts of that case were totally different. In that case, the question was relating to admissibility of the certified copy of the extract from the Register of Births. In the instant case, the Petitioner alleges that the document, i.e., birth certificate, is a forged one. Thus, the burden lies on the Petitioner himself to prove his allegation by leading cogent evidence. Instead of doing that, he has challenged the impugned order in this revision.

6. For the reasons stated above, this Court is not inclined to interfere with the impugned order. The revision is accordingly dismissed. The Crl. Misc. Case being of the year 2004, this Court directs the learned Magistrate to dispose of the same by the end of August, 2007.