

(1995) 07 OHC CK 0002
In the Orissa High Court
Case No : Criminal Appeal No. 129 of 1992

Smt. Lata Dei alias Pramila and Others	APPELLANT
Vs	
Bishnu Charan Panda	RESPONDENT

Date of Decision : 13-07-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 125(1)

Citation : (1996) 1 ALT(Cri) 6 : (1995) 2 CivCC 637 : (1996) CriLJ 156 : (1995) 2 OLR 569 : (1996) 1 RCR(Criminal) 205

Hon'ble Judges : P. Ray, J;A. Pasayat, J

Bench : Division Bench

Advocate : B.C. Patry and V. Narasingh, for the Appellant; R.N. Panigrahi, D.P. Mohapatra, D. Panigrahi and P. Tripathy, for the Respondent

Judgement

A. Pasayat, J.—Judgment of learned Judge, Family Court, Cuttack rejecting the prayer made by appellant Lata Dei on her own behalf and on behalf of her two children, namely, Puspa Manjari Panda alias Alok, and Samir Kumar Panda, for maintenance in terms of Section 125 of the Code of Criminal Procedure 1973 (in short, the "Code") is the subject-matter of challenge.

2. The appellants (described as applicants hereinafter for convenience) lodged an application claiming maintenance from Bishnu Charan Panda (hereinafter referred to as the "opposite party") on the ground that applicant Lata was the legally married wife of Bishnu, and two children were born out of their wedlock.

3. Background facts as described in the claim application are essentially as follows :

Lata was married to Bishnu according to Hindu rites and customs in the year 1975, and they led Happy conjugal life for some time and out of their wedlock two children Puspa Manjari Panda and Samir Kumar Panda were born. After some years of happy marital life, Bishnu at the instance of his maternal uncle started misbehaving with Lata. Since Lata became weak after delivery of the second

child, Bishnu started ill-treating her, and took no notice of Lata's difficulties and forced her to go to her father's house. In the year 1984, sometime in the month of November, Bishnu assaulted Lata and ultimately drove the applicants from his house. They remained in the house of Lata's father for about a month, and thereafter again came to the house of Bishnu. But they were driven out by Basudev Misra and Krushna. Threat was given that Bishnu would marry again. Grievance was made before the villagers and a Panchayat was convened, where it was decided that Bishnu shall maintain the applicants and transfer some lands in their names by 31-8-1985. On 2-11-1985 Basudev Misra and Bishnu's elder brother brought a lady named Kamini, and got her married to Bishnu. Since the marriage of Bishnu was not done in accordance with law, Lata had to take shelter of Court, and a case for bigamy and demand of dowry was instituted. Bishnu has sufficient means to maintain Lata and the two children, but without any justifiable reason he neglected to do so, and therefore the applicants were entitled to maintenance of Rs. 500/- per month. Claim of maintenance was made. Bishnu filed objection denying the marriage. It was stated that on 31-5-1978, he was married to one Manasi and he had no connection whatsoever with the applicants. On 29-7-1985 the Officer-in-charge of Choudwar Police Station at the instigation of one Kasinath Panda, who was inimical to Bishnu, brought him to Police Station and threatened with dire consequences if he did not accept Lata to be his wife and the two children to be their offsprings. Finding no other way, Bishnu signed an agreement to give 20 decimals of agricultural land, and 1 decimal of homestead land and to pay Rs. 80/- per month. Evidence was led and documents were brought on record by the parties. On consideration thereof, learned Judge, Family Court came to hold that Lata has squarely failed to prove her marriage with Bishnu.

4. Mr. B. C. Patry, learned counsel for the applicants-appellants submitted that materials on record have not been properly considered by the learned Judge, Family Court. Mr. R. N. Panigrahi learned counsel for respondent Bishnu on the other hand submitted that the fact situation is so tell-tale that the inevitable conclusion is that the applicants have foisted a false case and have not been able to establish any relationship between Lata and Bishnu, much less of marital relationship.

5. On consideration of evidence on record, we find that Lata has not been able to establish her marriage with Bishnu. There is ample material on record to show that marriage of one Manasi with Bishnu took place on 31-5-1978, and a daughter was born to them on 2-6-1980. This is evident from Ext. A and Ext. B. On a perusal of the materials on record, it is clear that imaginary dates have been given for alleged marriage of Lata with Bishnu, and of Bishnu with a non-existent Kamini. The conclusion of the learned Judge, Family Court that the appellant tried to take advantage of name of Bishnu's wife (Manasi) and made an attempt to say that her name was Manasi is founded on ample material. It is true, proceeding u/s 125 of the Code is summary in nature, and where a man and a woman lived together as husband and wife and treated as such by the

community, and the man treated the woman as his wife, marriage between them has to be inferred for the limited purpose of Section 125 of the Code. But even that type of evidence is not forthcoming in the case at hand. The conclusions of the learned Judge. Family Court that Lata has failed to establish her marriage is on terra firma.

6. But that is not the end of the matter. Maintenance was also claimed in respect of two children. Section 125(1) of the Code is clear in terms about entitlement to maintenance of an illegitimate minor child. The relevant provision reads as follows :

"125. Order for maintenance of wives, children and parents :

(1) If any person living sufficient means neglects or refuses to maintain-

(a) his wife, unable to maintain herself; or

(b) his legitimate or illegitimate minor child, whether married or not unable to maintain itself; or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such, child is by reason of any physical or mental abnormality or injury unable to maintain itself; or

(d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees on the whole as such Magistrate thinks fit and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in Clause (b) to make such allowance until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child if married is not possessed of sufficient means.

Explanation--For the purpose of this Chapter -

(a) "minor" means a person who, under the provisions of, the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from her husband and has not remarried."

Even if it is accepted that marriage of Lata as claimed with Bishnu is not established, in case it is found that Puspa and Samir are illegitimate children of Bishnu and Lata, they would be entitled to maintenance. The question is whether there is any material to show that they are illegitimate children of Bishnu.

7. The object of Section 125 of the Code is to provide a summary remedy to save

dependants from destitution and vagrancy and this is to serve a social purpose, apart from and independent of the obligations of the parties under their personal law. The right of the child legitimate or illegitimate under the Code is an Individual right, of the child in his or her own right, independent of the mother. When a woman claims maintenance on behalf of a minor child out of wedlock against his alleged putative father, the onus is on her to show that the child could only have been born through the alleged father under the circumstances of an exclusive relationship (See AIR 1962 Mad 141: B. Mahadev Rao v. Yasoda Bai, and Durairaju Vs. Neela and Another,). In such a case the woman being a highly interested person the Court has a duty to see that her statement gets some independent corroboration direct or circumstantial that the claimant could have conceived the child when she and the alleged father had access to each other.

8. Section 125 aims not to punish for the past, but to prevent future vagrancy by compelling those who are capable to support those who are unable to support themselves and have a moral claim to support. (See Jagir Kaur and Another Vs. Jaswant Singh,). While deciding the case of an entitlement of a child paternity and not legitimacy has to be seen. Where maintenance is claimed for an illegitimate child from an alleged father, it is not enough that the defendant would have been the father, but the Court has to find out that in all reasonability no one else could have been the father. These aspects were highlighted by one of us (Pasayat, J.) in Ahalya Sariha alias Barihani v. Chhalia Padhan : (1992) 5 OCR 308.

9. Since the learned Judge, Family Court has not considered these aspects, we feel it proper to remit the matter back to the learned Judge, Family Court to consider the only question whether the applicants Puspa and Samir are the illegitimate children of Bishnu. The parties will be permitted to lead evidence on this aspect alone.

The appeal is accordingly disposed of.

P. Ray, J.

10. I agree.