
(2013) 10 OHC CK 0015

In the Orissa High Court

Case No : Writ Petition (Criminal) No. 697 of 2013

Sri Amulya Kumar Jena

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 28-10-2013

Acts Referred:

Citation : (2014) 117 CLT 266 : (2014) 1 ILR (Ori) 250 : (2013) 2 OLR 998

Hon'ble Judges : M.M. Das, J;A.K. Rath, J

Bench : Division Bench

Judgement

1. Since the Lawyers have abstained from Court work, the petitioner appears in person. Pursuant to the order dated 20.08.2013, Sri Biswanath Rama Chandran CST Voltire Secretary of AMOFOI Organization, on receiving notice, has appeared in person. He submits that the said AMOFOI is a registered society under the Indian Societies Registration Act, 1860 and the society is conducting marriages in Gandharba form under the Hindu Law. However, he is unable to satisfy the Court as to under what provision of law, the said Organization is authorized to perform such marriages.

2. In the instant case, we find that the marriage took place with the aid and advice of the AMOFOI at AMOFOI on 26.03.2013. By that date, the victim was a minor, i.e. below 18 years of age.

3. Section 5 of the Hindu Marriage Act, 1955 prescribes the conditions to be fulfilled for solemnizing the marriage between two Hindus. Sub-section (iii) thereof provides that bride-groom must have completed the age of 21 years and the bride must have completed the age of 18 years at the time of marriage. A Hindu marriage can be solemnized in accordance with the customary rights and ceremonies of either parties thereto as envisaged in Section 7 of the said Act.

4. No doubt, a Gandharba form of marriage is a form of marriage recognized by the Hindu Law. But, however, the power to register a Hindu marriage as per the Hindu Marriage Act, 1955 vests with the authorized marriage officer, who is duly

authorized by the State Government as prescribed u/s 8 of the Act, which provides that for the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose. Even the marriage solemnized and registered u/s 8 of the Act has to comply with the conditions of Section 5 of the Act.

5. The State of Odisha has framed a set of rules called "The Orissa Hindu Marriages Registration Rules, 1960". Under the said Rules, the State Government may, by notification from time to time, appoint any officer to be Registrar for the purposes of the said Rules having jurisdiction over such local area as may be specified in the notification. A marriage duly solemnized in accordance with the provisions of the Act, may, on an application made in accordance with the said Rules be registered by the Registrar and the Registrar is required to maintain a Register, which shall be a bound book and the pages of such Register shall be machine numbered in the form set out in Appendix as Form-A. Procedure for making application in Form-B under the Rules has been prescribed and also the procedure to be followed by the Registrar is also prescribed under the Rules. No registered society has been notified to function as the Registrar for the purposes of the Act and Rules, far less, the Society called "AMOFOI".

6. In view of the above position of law, with regard to Hindu marriage, first of all, we find that AMOFOI is not an organization authorized by the State Government u/s 8 of the Act to register marriages and grant marriage certificates. The certificate granted to the victim stating that she has got married to Bunu Behera by the AMOFOI is an invalid certificate and it is not only contrary to Section 5 of the Act but also the said AMOFOI is not authorized to grant marriage certificates as has been done in the instant case.

7. It has come to the notice of this Court that many minor girls are being allowed to get married by the AMOFOI and certificates are being granted by the said society contrary to law as discussed above. Such certificates cannot be treated to be valid certificates of marriage. It also creates disruption in families of the girl as well as boy due to such marriages, which are definitely without the consent of their respective parents.

8. No doubt, if the couple satisfies the condition as enumerated in Section 5 of the Act, they have the liberty to approach the authorized marriage officer for registration of their marriages, but not a society like AMOFOI. Mr. B. Rama Chandran designating himself as CST Voltire Secretary of AMOFOI also submits before us that the said organization is conducting marriages between many couples and to ascertain the age of the bride and the groom, they are only insisting upon affidavits. In the instant case also, an affidavit was filed before them by the victim girl stating that she is 19 years of age. But on verifying her Matriculation Certificate, we find that she was a minor on the date, when such marriage was performed by the AMOFOI, i.e., 20.08.2013 and a certificate was

granted by the said AMOFOI.

9. Finding that all such marriages conducted by the AMOFOI are contrary to law and at their instigation, on receiving considerable amount of fees, as admitted by Mr. B. Rama Chandran, the AMOFOI is performing such marriages and granting certificates, we are of the view that such action is causing social injustice and frequent disturbances in the houses of the respective bride and bride-groom. For such illegal action, having been committed by the AMOFOI, we direct that the AMOFOI shall pay a cost of Rs. 2,00,000/- (Rupees two lakhs). Considering the recent devastation due to natural calamities in the State, we feel it appropriate and direct that such cost shall be deposited in the Chief Minister's Relief Fund within a week and a receipt to that effect should be filed before the Registry of this Court, which shall be put up along with this record before us on 18.11.2013.

10. However, as we find that after attaining the age of 18 years, the victim has got married to one Bunu Behera and the marriage has been registered by the Marriage Officer, Dhenkanal on 31st July, 2013 and a marriage certificate to that effect is produced by the victim and the said marriage is a valid marriage and further the victim states before us that she wants to accompany her husband, we direct the Investigating Officer to give custody of the victim to her husband Bunu Behera, who is also present in Court.

11. The personal appearance of the Investigating Officer is dispensed with.

12. The documents produced by Mr. B. Rama Chandran be kept on record. The certified copy, if applied for, of those documents be granted. Xerox copy of the High School Certificate Examination, the Marriage Certificate granted by the AMOFOI as well as granted by the Marriage Officer, Dhenkanal also be kept on record.

13. Put up this matter on 18.11.2013. Urgent certified copy of this order be granted as per rules.