

(2008) 08 OHC CK 0080
In the Orissa High Court
Case No : Criminal Rev. No. 705 of 2005

Sri Dharma Bahaji Bairi

APPELLANT

Vs

Smt. B. Rajeswari and Another

RESPONDENT

Date of Decision : 06-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125
Penal Code, 1860 (IPC) — Section 498A

Citation : (2008) 41 OCR 498

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Advocate : G.K. Behera, for the Appellant; L. Samantaray, U.K. Barik, R. Pradhan and S.K. Jena, for the Respondent

Final Decision : Dismissed

Judgement

Pradip Mohanty, J.—In this criminal revision, the Petitioner challenges the Judgment passed by the S.D.J.M., Berhampur in a proceeding u/s 125 Code of Criminal Procedure registered as Misc. Case No. 112 of 1998 directing the Petitioner maintenance to opp. parties 1 and 2.

2. Case of the opposite parties before the Court below was that opposite party No. 1 is the legally married wife of the Petitioner. Their marriage was solemnized on 25.06.1995 at Raghunath " Budhakendu temple, Gangapur as per their caste and customs. Both the Petitioner and opposite party No. 1 stayed in a rented house at Berhampur. While staying there, it is alleged, the Petitioner used to ill-treat and assault opposite party No. 1 for non-fulfilment of demand of dowry. By then, opposite party No. 1 was pregnant and while running 7 months pregnancy, she went to her father's house for delivery. There she gave birth to a female child in MKCG Medical College-Hospital, Berhampur. Five months after the birth of opposite party No. 2, both the opposite parties went to the native of the Petitioner, but the Petitioner and his family members subjected opposite party No. 1 to cruelty on demand of further dowry. Finding no other alternative,

opposite party No. 1 came back to her father's place along with opposite party No. 2 and took shelter there. Her further case was that the Petitioner is an employee of the Indian Navy and gets a salary of Rs. 6000/- per month and thus has sufficient means to maintain the opposite parties. But as he is residing with another lady, he is not taking opposite party No. 1 to his house and thereby neglecting to maintain both the opposite parties.

3. The case of the Petitioner before the Court below was that opposite party No. 1 is not his legally married wife. He married to one B. Basanti, daughter of K. Dandapani on 30th April, 1993 as per caste customs. He has not married opposite party No. 1 at any point of time and has no relationship with her. It was also contended that opposite party No. 1 is earning Rs. 200/- per day as a lady tailor.

4. In order to prove her case opposite party No. 1 examined Four witnesses including herself and Petitioner examined three witnesses including himself. Opposite Party No. 1 also exhibited seven documents including voters' list and voters' identity card. Learned S.D.J.M. after considering the evidence on record and hearing the parties directed the Petitioner to pay a sum of Rs. 500/- per month to each of the opposite parties. Against that order, the Petitioner has preferred this revision.

5. Mr. Behera, learned Counsel for the Petitioner, submitted that in the instant case factum of marriage has not been proved. There is no material to establish that the Petitioner is the husband of opposite party No. 1. Oral evidence adduced by opposite party No. 1 does not establish such marriage. Findings of the Court below run contrary to the evidence on record. Gross error has been committed by the S.D.J.M. in not perusing his own Judgment passed in a G.R. case which was instituted by opposite party No. 1 u/s 498-A IPC read with Sec. 4 of the D.P. Act, wherein there is specific evidence that one Basanti is the legally married wife of the Petitioner.

6. Mr. Samantaray, learned Counsel appearing for the opposite parties, contended that there is no illegality committed by the S.D.J.M. The G.R. case is altogether a different and distinct proceeding from one u/s 125 Code of Criminal Procedure where strict proof of marriage is not required. In such a proceeding, the Court is only to be prima facie satisfied that opposite party No. 1 is the wife of the Petitioner. In the case at hand, opposite party No. 1 has successfully proved the marriage and the relationship of the Petitioner with opposite parties 1 and 2 by adducing oral as well as documentary evidence, i.e., voters' list, voters' identity card and birth certificate. He also contended that Petitioner husband had taken a stand that he has married to one B. Basanti. Before the Court below, neither said B. Basanti nor any of her relations has been examined.

7. In support of their respective stand, both the parties relied upon the decisions in Bhabagrahi Samantaray Vs. Satyabhama Swain, , Bhabagrahi Samantaray v. Satyabhama Swain (2004) 28 OCR 53, Dwarika Prasad Satpathy Vs. Bidyut Praya

Dixit and Another, , Dwarika Prasad Satpathy v. Bidyut Prava Dixit and Anr. (2000) 18 OCR (SC) 348, Sarat Chandra Patnaik v. Binodini Pattnaik (1999) 16 OCR 192, Balaram Singh Vs. Sita Bhoi, , and Millon Mukherjee v. Smt. Archana Mukherjee (2005) 31 OCR 611 : 2005 (Supp.) OLR 287.

8. Perused the LCR and the decisions cited by the parties. From a bare reading of the ratio decided in the above noted cases, it is crystal clear that in a proceeding u/s 125 Code of Criminal Procedure, the Magistrate is expected to pass appropriate orders after being prima facie satisfied about the marital status of the parties. If the Magistrate is satisfied with regard to performance of marriage, which is summery in nature, strict proof of essential rites is not required. Either of the parties aggrieved by the order of maintenance u/s 125 Code of Criminal Procedure can approach the Civil Court for declaration of the status, as the order passed u/s 125 Code of Criminal Procedure does not finally determine the rights and obligations of the parties. With the above touchstone, this Court examined both oral and documentary evidence on record. The factum of marriage has been proved by P.Ws.2, 3 and 4. The evidence of P.W.1-wife also gets support from the evidence of P.Ws.2 and 3 to the effect that opposite party No. 2 was born out of the wedlock between the Petitioner and opposite party No. 1. Nothing contrary has been elicited from their cross-examination. Evidence of P.Ws.1 to 4 to the effect that opposite party No. 1 is the legally married wife of the Petitioner is also supported by the documentary evidence- (Exts.6 & 7). OPWs 1 to 3 have specifically stated in their evidence that Petitioner had married to another lady, namely, B. Basanti, daughter of K. Dandapani. But said B. Basanti or her father was not produced by the Petitioner nor examined before the Court below to prove that B. Basanti was the legally married wife of the Petitioner. Moreover, not a single scrap of paper has been filed by the Petitioner to prove that B. Basanti is his legally married wife.

9. In view of what has been stated above, this Court does not find any illegality or infirmity in the impugned Judgment and so this Court is not inclined to interfere with the same. The revision is accordingly dismissed.