

(2010) 12 GAU CK 0019
In the Gauhati High Court
Case No : Criminal Petition No. 27 of 2010

Sri Krishna Nama Das

APPELLANT

Vs

Smti Pushpa Nama Das and Master Kishan Nama Das

RESPONDENT

Date of Decision : 21-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 482

Citation : (2011) 3 GLR 10 : (2011) 1 GLT 605

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : S. Lodh, for the Appellant; P. Roy Barman, for the Respondent

Judgement

B.D. Agarwal, J.—This Criminal Petition u/s 482 of the Code of Criminal Procedure, 1973, (hereinafter, referred to as "Code of Criminal Procedure ", for short), has been filed by the husband assailing the judgment and Order dated 22.07.2010, passed by the learned Additional Sessions Judge, Khowai, West Tripura, in Cr.(Rev) No. 3 of 2009, whereby the Revisional Court has affirmed the judgment and Order dated 25.05.2009, passed by the learned Judicial Magistrate First Class, Khowai, West Tripura, in Misc Case No. 18 of 2007, u/s 125 Code of Criminal Procedure In other words, both the Courts below have allowed maintenance allowance of Rs. 2,500/- to the Respondents herein. Being aggrieved with the aforesaid judgments, the husband has preferred this application.

2. Heard Sri S Lodh, learned Counsel for the Petitioner. Also heard Sri P Roy Barman, learned Counsel for the Respondent. I have also gone through the impugned judgments.

3. The Respondents herein filed an application u/s 125 Code of Criminal Procedure , in the Court of learned SDJM, Khowai, in the year 2007, contending that the marriage of Respondent No. 1 with the Petitioner herein was solemnized on 25.11.1996 as per Hindu rites in presence of witnesses and out of their

wedlock the Respondent No. 1 was blessed with a child(R-2). It was also pleaded in the said application that after her marriage the Petitioner has married another woman Smt Mira Nama Das and has started living with the second wife. With this allegation and other averments regarding her incapacity to maintain herself and the minor child, a sum of Rs. 3,000/- was prayed as maintenance allowance. The aforesaid prayer of maintenance allowance was resisted by the husband by filing written statement. In the said written statement, the Respondent denied his marriage with the Applicant and on the other hand, it was asserted that Smt Mira Nama Das was only the legally wedded wife of the Petitioner.

4. Both the sides adduced oral evidences. However, as per the findings of the learned Judicial Magistrate First Class, neither party could prove to his satisfaction about their respective marriages. In other words, neither the husband could establish his marriage with Smt Mira Nama Das nor the Respondent No. 1 could prove that she was the legally married wife of the Petitioner. Despite that, evidences were enough to take a view that the Petitioner was having conjugal relation with the Appellant and accordingly maintenance allowance of Rs. 2,500/- was granted for herself and her son. The judgment of the learned SDJM, Khowai, was challenged before the learned Additional Sessions Judge and the learned Additional Sessions Judge rejected the revision application, leading to the filing of the present criminal application.

5. Relying upon the judgment of the Supreme Court rendered in the case of Ganesh Narayan Hegde Vs. S. Bangarappa and Others, Sri Lodh, learned Counsel for the Petitioner submitted that if the revisional Court do not exercise its revisional powers effectively, there is no bar to entertain the application u/s 482 Code of Criminal Procedure According to Sri Lodh, the Petitioner had filed 2 (two) documents in the trial Court to show that the husband was already a married person and as such, the Applicant/ Respondent No. 1 was not entitled to any maintenance, even if, it is found that that she had any kind of relation with the Petitioner. I will refer to those documents at a later stage.

6. On the other hand, Sri Roy Barman, learned Counsel for the Respondents also cited the judgment of the Apex Court rendered in the case of Preeti Gupta and Another Vs. State of Jharkhand and Another, with respect to the contours of Section 482 Code of Criminal Procedure In the said judgment, the Hon"ble Supreme Court has referred to certain observations made in the case of Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, and the said observations may also be profitably reproduced below:

Inherent powers u/s 482 Code of Criminal Procedure though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the Court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the Court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

7. Now the question is whether the Sessions Court vis-?-vis the trial Magistrate have committed any error in not expressing any opinion with regard to documentary evidence of first marriage. The first document is a Progress Report of a School, wherein the name of the parents of the Petitioner's son has been mentioned. In the said Progress Report, the mother's name has been shown to be Smt Mira Nama Das. The second document is the General Provident Fund (GPF) membership form, submitted by the Petitioner in the Office of his employer. In the said form, Smt Mira Nama Das was shown to be the nominee and her relationship with the Petitioner was stated to be wife. The said GPF form was submitted in the month of June 1994. Referring to the judgment of the Supreme Court rendered in the case of Savitaben Somabhai Bhatiya -Vs-State of Gujrat, reported in AIR 2005 SCW 1601 ; Sri Lodh, learned Counsel for the Petitioner contended that documentary evidence can be considered as sufficient proof of the first marriage. In this judgment the Hon''ble Supreme Court has observed that a woman claiming maintenance u/s 125 Code of Criminal Procedure must be a legally wedded wife and the law does not give any protection to a woman whose marriage is not in accordance with law and customs. At the same time, the Hon''ble Supreme Court has also approved the observations made earlier by the apex court in the case of Vimala (K.) Vs. Veeraswamy (K.), wherein it has been held that "when a plea of subsisting marriage is raised by the Respondent/husband it has to be specifically proved by tendering evidence to substantiate that he was already married".

8. On the other hand, Sri Roy Barman, learned Counsel for the Respondents also cited the judgment of the Supreme Court rendered in the case of Dwarika Prasad Satpathy Vs. Bidyut Praya Dixit and Another, In this judgment, the Apex Court has observed that Section 125 Code of Criminal Procedure is a beneficial provision and as such, any application filed, seeking maintenance allowance, has to be decided summarily and strict proof of marriage is not required. Their Lordships have further observed that an order passed u/s 125 Code of Criminal Procedure does not need determination of rights and obligations of the parties and the said provision has been enacted with a view to provide summary remedy to prevent that a woman does not suffer from destitution. Their Lordships have further observed that if the claimant in a proceeding u/s 125 Code of Criminal Procedure succeeds in showing that she and the Respondent have lived together as husband and wife, the Court can presume that they are legally wedded spouses, and in such a situation, the party who denies the marital status can rebut the presumption.

9. The learned Counsel for the Respondents also cited another judgment from the Apex Court rendered in the case of Vimala (K) (supra), wherein, the Hon''ble Supreme Court has held that when a husband repudiates his marriage with the Applicant he carries heavy burden to prove the fact of his earlier marriage. The relevant observations of the Apex Court are reproduced below:

3. Section 125 of the Code of Criminal Procedure is meant to achieve a social

purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. When an attempt is made by the husband to negative the claim of the neglected wife depicting her as a kept mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage. The term "wife" in Section 125 of the Code of Criminal Procedure, includes a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. The woman not having the legal status of a wife is thus brought within the inclusive definition of the term "wife" consistent with the objective. However, under the law a second wife whose marriage is void on account of the survival of the first marriage is not a legally wedded wife and is, therefore, not entitled to maintenance under this provision. Therefore, the law which disentitles the second wife from receiving maintenance from her husband u/s 125, Code of Criminal Procedure, for the sole reason that the marriage ceremony though performed in the customary form lacks legal sanctity can be applied only when the husband satisfactorily proves the subsistence of a legal and valid marriage particularly when the provision in the Code is a measure of social justice intended to protect women and children. We are unable to find that the Respondent herein has discharged the heavy burden by tendering strict proof of the fact in issue. The High Court failed to consider the standard of proof required and has proceeded on no evidence whatsoever in determining the question against the Appellant. We are, therefore, unable to agree that the Appellant is not entitled to maintenance.

10. In the case before me, the husband did not give full details of his marriage with Mira Nama Das in his written statement. Only a vague statement was made that the said woman was his legally wedded wife and he did not marry the Applicant. Strangely, the husband did not produce his wife (Smt Mira Nama Das) in the Court to prove their marriage. Besides this, the Petitioner also did not bother to summon any witness either from the school or from his Office to prove the documents, i.e., the Progress Report of his son as well as the nomination form submitted for subscribing GPF. In my considered opinion, the declarations given in the school and GPF form were unilateral and these documents were not formally scrutinized by the authorities. In my considered opinion with-holding the alleged first wife from the proceeding and non-examination of witnesses to prove the documentary evidence rendered the husband's case as limbless and the courts below were not obliged to answer about the authenticity and implication of the documents. I am also of the view that, in the facts and circumstances, the aforesaid unproved documents were not enough to conclusively prove the marriage with Smt Mira Nama Das. The Hon'ble Supreme Court has already held that when the husband raises a plea of his marriage with another woman earlier and denying any relation with the Applicant it is the bounden duty of the husband to prove his former marriage. However, in the case before me, neither the first wife was produced in the Court to prove the fact of marriage nor the documentary evidence was formally brought on record. Hence, the Courts below,

more particularly, the Sessions Court did not commit any error of law in not rendering any decision on the said documents.

11. For the reasons alluded hereinabove, I do not find any merit in the criminal petition and the same is hereby dismissed.

However, there is no order as to costs.